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TO THE FIFTH EDITION.

THE Fourth Edition of this Book was published in 1885. The alterations that have been made have reduced considerably the space occupied by the text in the present Edition, but it is hoped that nothing of importance has been omitted.

E. M. S.

Easter, 1902.

PREFACE

TO THE FIRST EDITION.

THERE are so few persons not interested in the law applicable to the relationship of Master and Servant, either in one capacity or the other, that the publication of a Treatise upon that subject may seem to most people to require but little apology. With *professional* men, however, the case is somewhat different. They have been so long accustomed, when any question of law arising out of the relationship of Master and Servant has been brought before them, to refer, if necessary, to works of *general* application, such as treatises on contracts, agency, or criminal law, or to digests, indices, and abridgements; that *they* may perhaps hardly have felt the want of a separate Work upon the Law of Master and Servant. But it is conceived that even professional men may be more truly said to have become *used to the want* of such a work, than not to have felt it. It is, at least, to the existence of a strong impression upon the mind of the Author that such was the case, and that a Book exclusively devoted to the subject he has attempted to elucidate *was wanted*, combined with a desire on his part to supply what he considered a deficiency in the list of legal publications, that the present work owes its origin. In it he has attempted to concentrate all (*a*) that information upon the subject treated of which has hitherto been diffused through *many*

(*a*) A Chapter on the Law of Settlement by Hiring and Service was partially prepared, but the addition of it would necessarily add much both to the size and price of this Volume. Upon further reflection, therefore, the Author has determined to *omit* it, and this, the rather, as the subject daily *decreases* in importance, and questions upon it now seldom arise.

books. How far he has succeeded in his object it is not for himself to determine. Whilst, however, on the one hand, he is well aware that many defects may, and not improbably will, be discovered in the following Work; on the other hand, he ventures to express his hopes that it will not be found altogether useless, even to the members of his own Profession; who, he trusts, will receive it with that indulgence which they are ever wont to accord to the efforts of their younger brethren. And if it shall be found by experience that the Author has so far succeeded in his undertaking as to have acted the part of a pioneer only upon a path hitherto, if not altogether untrodden, at least but imperfectly explored, he will be sufficiently compensated for his labours by the reflection that his leisure hours, which the present abnormal condition of his Profession has rendered more than usually numerous, have not been altogether mis-spent, whilst devoted to the preparation of this Work.

MIDDLE TEMPLE,

Trinity Term, 1852.

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INTRODUCTION.

IN treating of the Law applicable to the relationship of Master and Servant as it exists in England at the present day, it seems to be unnecessary to enter into any discussion of the various opinions which have been expressed by different authors as to the first origin of that relationship (*a*) ; for since it is obvious that, in the complicated intercourse of modern society, a great proportion of the business of human life must be carried on through the instrumentality of others, and it is also clear that slavery does not now (*b*) exist, in any shape, in England, where every man is, and (according to that memorable sentiment expressed in the will of Alfred the Great) it is fit that every Englishman should ever remain, as free as his own thoughts, it seems to follow inevitably, not only that the relationship of master and servant must exist, but also that wherever it does exist in this country it must be by virtue of some agreement, either express or implied,

(*a*) The curious on this subject may consult Puff. de Jure Nat. ac Gent., lib. 6, cap. 3, where various opinions are discussed ; and see Co. Litt. 116 *b* ; Bl. Com. vol. i. ch. 14 ; Encyc. Brit. tit. "Slavery." Grotius divides servitude into perfect and imperfect, and, amongst the latter, classes *mercenarii* :—"Inter quos," he says, "ii qui in Anglia *apprentisii* dicuntur durante disciplinæ suæ tempore, proxime ad servilem conditionem accedunt," lib. 2, cap. 5, sec. 30 ; and M. Barbeyrac, in his notes, refers to Thom. Smith de Republ. Anglic. lib. 3, cap. 10.

(*b*) During the Anglo-Saxon times, slaves were one of the principal English exports. Strabo, l. 4. p. 199 (ed. Paris, 1620) ; Barr. on Stat. 274 ; Russ. Mod. Eur., note to P. S. to Letter xx. In *Santos v. Illidge*, 29 L. J., C. P. 348, it was held by the majority of the Court of Exchequer Chamber, reversing the judgment of the Court of Common Pleas, 28 L. J., C. P. 317, that an action might be brought in England for the noncompletion of a contract for the purchase of slaves in Brazil.

between the parties. Puffendorf (*c*), too, refers its first origin to contract: he says, "the first rise of servitude is owing to the voluntary consent of the poorer and more helpless persons, and is founded upon that common form of contract—*Do, ut facias*."

But whatever its origin, servitude, in some shape or other, has clearly existed from the remotest antiquity; and without inquiring into the condition of the slave amongst the ancient Grecians and Romans, which might be considered irrelevant to the object more immediately in view in the following pages, it may be convenient to offer a few remarks upon the state of the slave, or vilein, in this country, whose condition had most of the incidents of slavery; and to trace the progress of English legislation with reference to that class of persons, commonly called servants and labourers, who in most respects supply the places formerly occupied by vileins, though their condition is far superior.

Both among the German Saxons and among the Anglo-Saxons slaves or vileins were divided into two classes—household slaves (*d*), after the manner of the ancients, and predial, or rustic, who were transferred like cattle with the soil (*e*); though there does not appear to have been much difference between the two as to their condition. The power of a master over his slaves appears not to have been unlimited among the Anglo-Saxons as it was among their ancestors. If a man beat out his slave's

(*c*) Puff. lib. 6, cap. 3, sect. 4. Blackstone (vol. i. ch. 14) says, "The relationship of master and servant is founded in *convenience*," and he evidently means, that *convenience* induces men to enter into the *contract*, whence the relationship arises.

(*d*) In Kent's Comm., lxx. 32, vol. ii. p. 204, it is said, that domestic slavery existed throughout the United States when they were colonies of Great Britain. "But," adds the learned author (p. 206), "after the era of our Independence the principles of natural right and civil liberty were better known and obeyed, and domestic slavery speedily and sensibly felt the genial influence of the Revolution."

(*e*) See Hume's Hist. Engl. vol. i. chap. 3, App. 1; Spell. Gloss. Verb. Servus; Russ. Mod. Eur. part I, Letter viii.

eye or teeth, the slave recovered his liberty; if he killed him, he paid a fine to the King, provided the slave died within a day after the wound or blow, otherwise it passed unpunished (*f*).

Whether or not the feudal law had place at all among Anglo-Saxons is a doubtful question (*g*); but its introduction does not appear to have ameliorated the condition of the slaves or vileins, except in so far as it tended to promote the civilization of their masters, who, as long as villenage lasted, had an almost absolute power over them. Their service was uncertain and indeterminate, such as their lord thought fit to require, or, as some old writers express it, they knew not in the evening what they were to do in the morning (*h*); they were bound to do whatever they were commanded. They were liable to beating, imprisonment, and every other chastisement which their lord might prescribe, except killing and maiming. They were incapable of acquiring property for their own benefit, except by their lord's sufferance or permission—the rule being *quicquid acquiritur serro acquiritur domino* (*i*). They were themselves the subject of property; as such, saleable and transmissible. If vileins regardant, they passed with the manor or land to which they were annexed, but they might be severed at the pleasure of the lord. If vileins in gross, they were hereditaments or chattels real according to their lord's interest, being descendible to the heir when the lord was absolute

(*f*) *Leges Ælf.* § 17. This seems to be borrowed from the Jewish law, *Exod.* xxi. 20, 21, 26, 27.

(*g*) See Hume's *Hist. Engl.* vol. i. App. 2 to ch. 11; Hall. *Mid. Ages*, vol. i. ch. 2, p. 2; *Encyc. Brit.* tit. "Feodal System."

(*h*) *Co. Litt.* 116 *b*.

(*i*) "*Non potest aliquis*" (says Glanvil) "*in villenagio positus libertatem suam propriis denariis suis querere, quia omnia catalla eniustibet nativi intelliguntur esse in potestate domini sui.*" *Lib.* 5, cap. 5. The benevolence of lords, however, in many cases, allowed their vileins to acquire property (like the *peculium* of the Roman law), with which they purchased their enfranchisement. As to the *present* applicability of the maxim in the text, see *post*, p. 132.

owner, and transmissible to the executor when he had only a term of years in him. Lastly, the slavery extended to the issue if both parents were vileins, or if the father only was a vilein; our law deriving the condition of the child from that of the father, contrary to the Roman law, in which the rule was, *partus sequitur ventrem* (*j*). Larceny could not be committed by taking and carrying away a vilein; "because," said Lord Coke, "they are in the realty" (*k*). It was, however, only in respect of his lord that the vilein, at least in England, was without rights (*l*). He might inherit, purchase, sue in the courts of law, if his lord did not interfere, and when sued as a defendant in a real action or suit wherein land was claimed, he might shelter himself under the plea of villenage. If left executor, his lord could not take from him what belonged to the testator, but the vilein might have an action against him for the same, and might recover both the goods and damages, which would, however, of course be part of the testator's estate (*m*). And he seems to have been admissible as a witness in England in all cases, except as against his lord, though this point is rather obscure (*n*).

Such being the abject condition of the vilein, it is not to be wondered at, that as Christianity (*o*), civilization, and commerce advanced, villenage should have gradually become extinct. It is not, however, necessary here to

(*j*) See Lit. sect. 172 *et seq.*, and Hargrave's famous argument in *Sommersett's Case*, 20 How. St. Tr. 1.

(*k*) 3 Inst. 109.

(*l*) Lit. sect. 189.

(*m*) Swinh. p. 2, sect. 9, § 15.

(*n*) See Hall. Mid. Ages, vol. i. ch. 2, p. 2.

(*o*) The doctrine that slavery was contrary to the principles of the Christian religion, is said to have been originally inculcated by Wycliff and his followers. Barr. on Stat. 280. Paley, Polit. Philos. c. iii., says, "Christianity can only operate as an alterative. By the mild diffusion of its light and influence the minds of men are insensibly prepared to perceive and correct the enormities which folly or wickedness or accident have introduced into their public establishments. In this way the Greek and Roman slavery, and since then the feudal tyranny, has declined before it."

follow it in the several stages of its decline, or to trace the causes which led to its ultimate extinction. It will be sufficient to mention, that the period of its final extinction in England (which was effected without any actual interposition of the Legislature) (*p*), is generally fixed about the latter end of Queen Elizabeth's reign, or soon after the accession of James I. (*q*).

(*p*) See Barr. on Stat. 272—4. The case appears to have been otherwise in France, where Louis Hutin, in 1315. and Philip the Long, three years later, issued ordinances, declaring "that as all men were by nature free born, and as their kingdom was called the kingdom of Franks, they determined that it should be so in reality as well as in name: therefore they appointed that enfranchisements should be granted throughout the whole kingdom upon just and reasonable conditions." See Roberts. Introd. to Hist. Chas. V., sects. 1 and 4, and note xx. *ib.* He cites Ordon tom. 1. pp. 583, 653. Hallam, however, mentions as a fact not generally known, that predial servitude was not abolished in all parts of France till the Revolution, at the close of the last century. Mid. Ages, ch. 2, p. 2, note, p. 150, 9th edit. The feudal law was abolished in France by a decree of the National Assembly, 4th August, 1789. See the *Baron de Bode's Case*, 8 Q. B. 208, 246. It is remarkable, that till about the same period, or even later, there were in Scotland many colliers, coal-bearers and salters in a state of slavery or bondage, bound to the collieries and salt works, where they worked, for life, and transferable with the collieries and salt works when their original masters had no further use for them. These men were not all free till an Act of Parliament was passed (39 Geo. 3. c. 56), declaring them to be so, for they appear to have neglected to avail themselves of an Act which had been passed nearly a quarter of a century before (15 Geo. 3. c. 28), which enabled them to obtain their freedom by going through certain forms. Lord Brongham, Polit. Philos. c. viii., *ad fin.*, says, they complained of the Act as a trick of the owners to evade certain payments. However this may be, the poet might well write—

"Such dupes are men to custom, and so prone
To rev'rence what is ancient, and can plead
A course of long observance for its use,
That even servitude, the worst of ills,
Because delivered down from sire to son,
Is kept and guarded as a sacred thing."—Cowp. *The Task*, B. 5.

In the life of Hugh Miller, by Brown, 1858, it is said, p. 71, that "so late as 1842, when Parliament issued a Commission to inquire into the results of female labour in the coal pits of Scotland, there was a collier still living that had never been twenty miles from the metropolis: who could state to the Commissioners that his father, his grandfather, and himself were slaves, and that he had wrought for years in a pit in the neighbourhood of Musselburgh, where the majority of the miners were also serfs." And the author adds, p. 72, "the colliers carried in their faces the too certain index at once of their social and intellectual condition, being mostly of that type to which a very strong resemblance is found in the prints of savage tribes. The effect of the emancipation of these poor creatures has been, that in less than a quarter of a century this *type of face* has disappeared throughout Scotland." May, Constit. Hist. vol. ii. p. 287, well remarks, "The last vestige of slavery was now effaced from the soil of Britain, but not until the land had been resounding for years with outcries against the African slave trade."

(*q*) One of the last instances in which villenage was insisted on was *Crouch's Case*, which happened 10 & 11 Eliz., and is reported in Dyer, 266, pl. 11,

As villenage gradually declined, the interposition of the Legislature appears to have become necessary for the regulation of labourers and servants, who seem to have been inclined to avail themselves of their freedom by remaining totally idle unless induced to work by high wages. But the first trace of any interposition on the part of the Government with a view of regulating the labour market is to be found in the Ordinance, Proclamation, or Statute, whichever it is, which is commonly called the Statute of Labourers, and which occurred 23 Edw. 3, A.D. 1349. In that year, when the plague, sometimes called "The Black Death," or "The Great Mortality," which is said to have destroyed one-third of the population of Europe (*r*), had extended its ravages to England, where it was equally destructive (*s*), so that servants and labourers of all sorts became excessively scarce, and demanded exorbitant wages (*t*), Edward III. (as Parliament was not sitting, having been prorogued on account of the plague) (*u*), by the assent of the

and 282. pl. 32. Mr. Hargrave, however, in his argument in *Sommersett's Case*, 20 How. St. Tr. 49, mentions several later cases. *Pigg v. Caley*, Nov. 27, decided in 1617, seems to be the last instance in which a claim of villenage was made in an English court of law.

(*r*) Various accounts of this plague are collected in Barnes, Hist. Edw. 3, B. 2, Ch. 8, p. 128. See also Knighton, p. 2599. There is also an account of its ravages in Florence in the Introduction to the Decameron of Boccaccio. He, too, speaks of the great "*scarsita di serrenti*" in Florence caused by it. See his account charmingly elaborated by Lord Lytton in his "*Rienzi*." It is remarkable that so little notice of this plague is taken by most historians of England, who appear to be absorbed in the recital of the French wars of Edw. III. Froissart says but little of it in his *Chronicles*, vol. i. p. 200 (Johnes' edit.). Hume and Goldsmith scarcely mention it. Lingard speaks more fully of it in his Hist. Eng. vol. iv. p. 86. There is only a short account in Carte's Hist. Engl. vol. ii. p. 475. See "The Great Pestilence" by Gasquet, published in 1893.

(*s*) Rogers in his *History of Prices*, vol. i. p. 60, thinks that it really destroyed not much less than half the population, and doubled the rate of wages, *ib.* 265.

(*t*) This effect of the plague was not confined to servants, for parish priests also, having become "very scant after the pestilence," an Act of Parliament was passed to regulate their wages, 36 Edw. 3, c. 8. See also 23 Edw. 3, c. 8, *ad fin.*

(*u*) Barnes, p. 457, says, "all suits and pleadings in the King's Bench and other places ceased, and all Sessions of Parliament for the space of more than two years were hindered." The writs for the prorogation are set out at length in Kymer's *Fœdera*, vol. iii. part 1, and show the progress of the plague in

Prelates, &c., and others of his Council (*de quorum unanimi consilio duximus ordinandum quod*, &c.), issued an ordinance, writ, or proclamation, directed to the Sheriffs of the various Counties in England, with a view of compelling workmen and labourers to serve for reasonable wages. This ordinance recites that "because a great part of the people, and especially of workmen and servants, late died of the pestilence, many seeing the necessity of masters will not serve unless they may receive excessive wages, and some rather willing to beg in idleness, than by labour to get their living"; and then proceeds to direct what wages shall be paid, and to make other regulations for the control of workmen and servants. It is printed at length in the Statutes at Large, as though it were an Act of Parliament, and is commonly referred to as "The Statute of Labourers" (r). But it would appear to be at least very doubtful, if it ever had the authority of an Act of Parliament. Moreover, its provisions appear to have been eluded by the ingenuity and avarice of the labourers. Knighton says, "*Operarii tamen adeo elati et contrariosi non advertabant regis mandatum, sed si quis eos habere vellet, oportuit eum*

England. See pp. 180, 182, 191. At p. 198 is a writ dated 18th June, 1350, 24 Edw. 3, directed to the Sheriff of Kent (and a note stating that *consilia brevia diriguntur singulis vicecomitibus per Angliam*), *quia magna pars populi et maxime operariorum et servientium in ultimâ pestilentia defuncta est*, with a view of compelling such to work for reasonable wages. This last appears to be the same as what is commonly called The Statute of Labourers. At p. 210 there are two other writs directed to individuals in Suffolk and Lincolnshire, dated 12th and 18th Nov. 1350, from which it would appear that the former writs to the sheriffs had not been much regarded.

(r) Barrington on Stat. calls it a *supposed* statute, because the intervention of the Commons is not mentioned, and adds in a note that it appears from Dugdale that no Parliament was held 23 Edw. 3, because of the plague. Knighton, p. 2600, says, "*Interim rex misit in singulos comitatus regni quod messores et alii operarii non plus caperent quam capere solebant, sub pœna in statuto limitata, et ex hoc innovavit statutum*." Barnes, p. 441, calls it a "King's Ordinance." See also 2 Rich. 2, c. 8. But 23 Edw. 3 appears to have been treated as a statute, F. N. B. 167 B. See note to Co. Litt. 42 b, 159 b; and also 4 Inst. 26. The true solution of the point would seem to be that the "King's Ordinance" of 23 Edw. 3 was made a Statute, 25 Edw. 3. See Hall. Mid. Ages, vol. ii. p. 181 (9th edit.). The point, however, is *now* more curious than important.

eis dare secundum suum velle, et aut fructus suos et segetes perdere, aut operariorum clatam et cupidam voluntatem ad rota implere." The King seems to have endeavoured to enforce his mandate, and enrich his own treasury, by fining the givers, and imprisoning the receivers, of exorbitant wages, though with little effect. For as soon as Parliament met after the plague had ceased, it was found necessary to pass an Act of Parliament having the same object, but of more extended operation. This Act, 25 Edw. 3, stat. 1, is, it is conceived, more properly entitled to the appellation of the "Statute of Labourers." It recites the "said ordinance" of 23 Edw. 3, and that "the said servants having no regard to the said ordinance, but to their ease and singular covetise, do withdraw themselves to serve great men and other, unless they have livery and wages to the double or treble of that they were wont to take the said 20th year of Edw. 3, and before, to the great damage of the great men, and impoverishing of all the said Commonalty, whereof the said Commonalty prayeth remedy." It then proceeds to enact, in order "to refrain the malice of the said servants," various provisions more extensive than those contained in the ordinance of 23 Edw. 3. Among them is one, "That all workmen bring openly in their hands to the merchant towns their instruments, and there shall be hired in a common place and not privy." This regulation, which was probably intended to prevent secret contracts of hiring at exorbitant wages, but which was repealed 5 Eliz. c. 4 (and again by 26 & 27 Vict. c. 125), appears to be the origin of those "Statutes," "Mops," or Fairs (*w*), for the hiring of servants still kept up in various parts of England, but which are now

(*w*) As to the obstruction of highways by stalls erected at these fairs, see *Simpson v. Wells*, L. R., 7 Q. B. 214. In "England in the Age of Wycliffe" by Trevelyan, an interesting account is given of the peasants' rising in 1381.

found to be productive of so much demoralization and harm to servants and labourers themselves, that great efforts are being made by clergymen and other philanthropic individuals to put them down.

Various statutes were also afterwards passed with a view to compel labourers and servants to work, and regulating their wages (*x*), diet (*y*), apparel (*z*), and games (*a*). And some to prevent people of small means making a great retinue of people, and giving them hats and other liveries (*b*), a custom which appears to have grown up, having for its object the mutual maintenance in quarrels, and which was not confined to noblemen (*c*).

At the commencement of the reign of Queen Elizabeth, however, all former acts regulating wages were repealed, “chiefly for that the wages and allowances limited and rated in many of the said statutes were in divers places too small, and not answerable to that time respecting the advancement of prices of all things belonging to the

(*x*) 25 Edw. 3, s. 1; 34 Edw. 3, cc. 9, 10, 11; 2 Rich. 2, c. 8; 12 Rich. 2, c. 4; 4 Hen. 5, c. 4; 2 Hen. 6, c. 14; 6 Hen. 6, c. 3; 8 Hen. 6, c. 8; 23 Hen. 6, c. 13.

(*y*) 37 Edw. 3, c. 8. See 3 Inst. 201.

(*z*) 37 Edw. 3, cc. 8, 9, 11, 14; 3 Edw. 4, c. 5; 22 Edw. 4, c. 1. These two, however, were not confined to servants, and they were repealed 24 Hen. 8, c. 13, and 1 Jac. 1, c. 25. See 3 Inst. 199.

(*a*) 12 Rich. 2, c. 6; 16 Rich. 2, c. 4; 11 Hen. 4, c. 4 (see 17 Edw. 4, c. 3); 11 Hen. 7, c. 2; 33 Hen. 8, c. 9. See now 8 & 9 Vict. c. 109.

(*b*) 1 Rich. 2, c. 7; 20 Rich. 2, cc. 1, 2; 1 Hen. 4, c. 7; 2 Hen. 4, c. 21; 7 Hen. 4, c. 14; 13 Hen. 4, c. 3; 8 Hen. 6, c. 4; 8 Edw. 4, c. 2. In 12 Edw. 4 it was found necessary to pass an Act of Parliament for enabling the Prince of Wales to give liveries to other than menial servants, 12 Edw. 4, c. 4. These Acts were repealed by 3 Car. 1, c. 4. See also 19 & 20 Vict. c. 64; 26 & 27 Vict. c. 125. Lord Coke (3 Inst. 200) says, “William of Malmesbury, comparing Englishmen and Normans together, saith, that in his time the English manner was to sit bibbing whole houres after dinner; and that the Norman fashion was to walk the streets with great troops with idle and loose serving men following them, both which were causes of many disorders and outrages.”

(*c*) By the statute 34 & 35 Hen. 8, c. 1 (A.D. 1542—3), it was enacted, not only that the Bible should not be read in English in any church, but also that no women or artificers, prentices, journeymen, serving men of the degree of yeomen or under, husbandmen, nor labourers should read the New Testament in English. This Act, however, which was chiefly directed against Tindal’s translation of the Bible, was repealed about four years afterwards, 1 Edw. 6, c. 12.

said servants and labourers," and power was given to justices of the peace and magistrates of cities and burghs to rate wages and fix prices of work (*d*). Acts of Parliament conferring similar powers were also passed in Scotland (*e*), where their provisions were found so beneficial that they were afterwards extended to colliers (*f*). But so much of those Acts as authorized and empowered justices of the peace and magistrates of cities and burghs to rate wages and fix prices of work for artificers, labourers, and craftsmen, has since been altogether repealed (*g*); and it is remarkable as showing the entire change of public opinion upon this subject, that in the Act for the arbitration of disputes between masters and workmen, which was passed in 1824 (*h*), there is a special provision, that nothing therein contained shall authorize justices, acting in execution of that Act, to establish a rate of wages without the mutual consent of both master and workmen.

The statute of 5 Eliz. c. 4 only gave power to the magistrates "to *limit, rate, and appoint*" wages, and gave no power to order payment of them. That power was, however, assumed by the magistrates, and their assumption of it was, by construction of law, held to be legal (*i*). But the statute being deficient, as it extended only to such wages as should be rated, and to servants in husbandry, and contained no power to

d 5 Eliz. c. 4; 1 Jac. 1, c. 6. The 5 Eliz. c. 4 was repealed by the Conspiracy and Protection of Property Act, 1875, *post*, p. 572.

e 22 Parl. Jac. 6, c. 8; 1 Parl. Car. 1, c. 38.

f 39 Geo. 3, c. 56; see 34 & 35 Vict. c. 116.

g 54 Geo. 3, c. 40; 36 & 37 Vict. c. 91. Several Acts which had been passed in the reign of Geo. 3, for empowering justices to regulate the wages of persons employed in the manufacture of silk, were repealed, 5 Geo. 4, c. 66; the provisions contained in them "having been found vexatious and injurious in their operation." The 29 Geo. 2, c. 33, s. 1, which empowered justices to make rates for the payment of wages to weavers and others employed in the woollen manufactures, was repealed, 6 Geo. 4, c. 129; 30 & 31 Vict. c. 59.

h 5 Geo. 4, c. 96, repealed by the Conciliation Act, 1896, *post*, p. 653.

i *R. v. Gouche*, 2 Salk. 411; *Shergold v. Holloway*, 2 St. 1002.

admit the servant's oath in evidence, another Act was passed in 20 Geo. 2, c. 19, giving more extensive powers to magistrates, and extending those powers to disputes between masters and various other descriptions of servants than those mentioned in the statute of Elizabeth. And this Act was found so beneficial in some respects, that although, as we have seen, repealed as to rating wages, several other Acts were subsequently passed extending the powers conferred by it in other respects (*j*). But these Acts were all repealed by the Conspiracy and Protection of Property Act, 1875.

The payment of wages in goods or otherwise than in the current coin of the realm was first forbidden in 1494 by the Act of 4 Edw. 4, c. 1, s. 5 (13), but the first Act in which the word "truck" was used in this connection was 12 Geo. 1, c. 34. That and all Acts previous to 1831 were repealed by what is now known as the Truck Act, 1831, which will be found in the Appendix, together with its amending Acts passed in 1887 and 1896. The payment of wages in public-houses is also forbidden by the Metalliferous Mines Act, 1872, the Coal Mines Regulation Act, 1887, and the Payment of Wages in Public-houses Prohibition Act, 1883, which is applicable to most trades.

The prevention and settlement of trade disputes has been also the subject of legislation. When this book was first published the Masters and Workmen Arbitration Act, 1824 (5 Geo. 4, c. 96), was the Act in force. It provided for the referring of disputes to justices, and with its amending Act, the Arbitration (Masters and Workmen) Act, 1872 (35 & 36 Vict. c. 46), remained

(*j*) As to masters and workmen, see 27 Geo. 2, c. 6; 31 Geo. 2, c. 11, s. 2; 6 Geo. 3, c. 25; 4 Geo. 4, c. 34; 10 Geo. 4, c. 52. As to masters and apprentices, see 33 Geo. 3, c. 55; 47 & 48 Vict. c. 43; 4 Geo. 4, c. 29; 4 Geo. 4, c. 34; 5 & 6 Vict. c. 7.

on the Statute Book till 1896, when both Acts were repealed by the Conciliation Act of that year. In 1867 an attempt was made to establish councils of conciliation to adjust differences between masters and workmen, but the Councils of Conciliation Act, 1867 (30 & 31 Vict. c. 105), which was passed for this purpose, appears to have failed in its object, and was repealed, with the two Acts just referred to, in 1896. The last attempt has been the Conciliation Act, 1896, which will be found in the Appendix. From the Third Report of the Board of Trade of proceedings under that Act, which was published in October, 1901, it appears that nineteen boards have been registered under section 1, but that a larger number of unregistered boards are in existence. The total number of cases dealt with by the Board of Trade under this Act from its commencement up to June, 1901, has been 113, out of which 40 have been in the building trades.

Acts of Parliament have also been passed at various times for the regulation of the employment of children and young persons in cotton and other factories, and for the preservation of their health and morals, which are commonly called "The Factory Acts."

The first Act for this purpose was passed in 1802 (*k*), and was amended in 1819 (*l*). Further enactments on the subject were made in 1825 (*m*), the provisions of which having been defeated for want of form, it was found necessary again to amend the law in 1829 (*n*). At the commencement of the reign of Will. 4, however, all these Acts (except the first) were repealed, and other regulations enacted in lieu thereof (*o*). But a few years

(*k*) 42 Geo. 3, c. 73.

(*l*) 59 Geo. 3, c. 66; 60 Geo. 3, c. 5.

(*m*) 6 Geo. 4, c. 63.

(*n*) 10 Geo. 4, c. 51.

(*o*) 1 & 2 Will. 4, c. 39.

afterwards those regulations were in their turn also repealed, and other Acts passed (*p*), which, however, were all repealed in 1878.

The provisions contained in the repealed Acts, which were applicable to young persons (that is, persons above thirteen and under eighteen years of age) (*q*), were first extended to females above that age in 1844 (*r*). In 1860, the powers and provisions of the Factory Acts were applied to bleaching works and dyeing works (*s*): in 1861, to lace factories (*t*): in 1862, to bleach fields or works in which the operation of bleaching by the open air process is carried on (*u*): and in 1863, to calendering works and finishing works (*v*). In 1863 there was also passed the Bakehouse Regulation Act, 1863, which limited the hours of labour of persons under eighteen years of age in bakehouses, and contained regulations as to the cleanliness of bakehouses. This Act was repealed with many others by the Factory and Workshop Act, 1878.

In 1867 the application of the Factory Acts was considerably extended, and they were applied to blast furnaces, iron and various other foundries, to manufactories of paper, glass and tobacco, as well as to letterpress printing and bookbinding, and in fact to any trade establishment in which fifty or more persons were employed in any manufacturing process; while smaller establishments were placed under the Workshop Regulation Act, 1867. Another advance was made by the

(*p*) 3 & 4 Will. 4, c. 103; 7 & 8 Vict. c. 15; 10 & 11 Vict. c. 29; 13 & 14 Vict. c. 54; 16 & 17 Vict. c. 104; 19 & 20 Vict. c. 38; 27 & 28 Vict. c. 48; 30 & 31 Vict. c. 103.

(*q*) 7 & 8 Vict. c. 15, s. 73.

(*r*) 7 & 8 Vict. c. 15, s. 32, and see 13 & 14 Vict. c. 54.

(*s*) By 23 & 24 Vict. c. 78, extended by 27 & 28 Vict. c. 98 [both repealed 33 & 34 Vict. c. 62, s. 5].

(*t*) By 24 & 25 Vict. c. 117 [repealed 41 & 42 Vict. c. 16, s. 107].

(*u*) By 25 & 26 Vict. c. 8 [repealed 33 & 34 Vict. c. 62, s. 5].

(*v*) By 26 & 27 Vict. c. 38 [repealed 33 & 34 Vict. c. 62, s. 5].

Factory and Workshop Act, 1878, which repealed and consolidated sixteen statutes. It was amended in 1883 by an Act dealing chiefly with whitelead factories and bakehouses; in 1889 by an Act applying to cotton cloth factories, and by another Act in 1891, containing various miscellaneous amendments. Next came the Factory and Workshop Act, 1895, which was the first of this series of Acts to deal with laundries. It also applied the provisions of the Act of 1878 to docks, and contained many other important matters. In 1897 another Act was passed which dealt solely with cotton cloth factories.

The last of this series of Acts is the Factory and Workshop Act, 1901, which will be found printed in the Appendix. By it the Act of 1878 and its five amending Acts were repealed and consolidated. Section 104 of this Act is substantially a re-enactment of section 22 of the Act of 1895, which deals with laundries, the laundries which are kept by convents being still exempt from the provisions of the Act.

The health of persons employed in shops and warehouses has of recent years been the subject of some legislation. The Shop Hours Act, 1892, placed restrictions on the number of hours for which persons under eighteen years of age may be employed in such places. This Act was amended in 1893 and 1895. The Shop Assistants Act, 1899, directs that seats behind the counter shall be provided in shops where female assistants are employed for the retailing of goods to the public.

In 1851, an Act of Parliament was passed for the protection of apprentices and servants, which for the first time rendered it a misdemeanor for any master or mistress, legally bound to supply necessary food and clothing or lodging to an apprentice or servant, wilfully, and without lawful excuse, to refuse or neglect to provide

the same. That Act will be further adverted to hereafter (*w*). It was indeed partly repealed in 1861, when the statutes relating to criminal law were consolidated (*x*), but its provisions were at the same time substantially re-enacted (*y*).

By direction of the Statute Law Commissioners, who were appointed 23rd of August, 1854, a bill appears to have been prepared by Mr. Rogers, and laid before the Board on the 13th of December, 1854, for consolidating the Statutes relating to masters and servants or workmen. This bill was originally prepared by Mr. Rogers, as a member of a former Board (appointed 23rd of July, 2 Will. 4), but was revised and completed by him for the Statute Law Commissioners (*z*). After being under their consideration for two years and upwards, it was ordered to be printed on February 11th, 1857; but it appears never to have been introduced into either House of Parliament.

In 1865 a select committee of the House of Commons was appointed "to inquire into the state of the law as regards contracts of service between master and servant, and as to the expediency of amending the same." This committee, having been reappointed in 1866, after hearing evidence, resolved unanimously, "That the law relating to master and servant, as it now exists, is objectionable," and also passed certain other resolutions to which it is not necessary further to advert. Their Report led to the passing of "The Master and Servant Act, 1867," which, however, as we shall see presently, has been repealed.

The year 1867 was, in fact, fruitful of legislation relating to masters and servants. As has been already

(*w*) 14 & 15 Vict. c. 11, *post*, p. 190.

(*x*) 24 & 25 Vict. c. 95.

(*y*) 24 & 25 Vict. c. 100. s. 26, *post*, p. 540.

(*z*) See their Report, 10th July, 1855.

mentioned, the application of the Factory Acts was considerably extended; the Councils of Conciliation Act, 1867 (*a*), enabled her Majesty or the Home Secretary to license equitable councils of conciliation to adjust differences between masters and workmen; and "The Agricultural Gangs Act, 1867" (*b*), provided regulations to be observed by every gangmaster with respect to the employment of children, young persons and women in the execution of agricultural work. Finally, the legislation of 1867 with respect to masters and servants was completed by "The Master and Servant Act, 1867," which, as has been already stated, has been repealed.

The efforts of the Government and the Legislature in 1867 were not confined to legislation as to the law of master and servant; they extended their labours to endeavouring to do something to regulate the action of trades unions.

On 12th February, 1867, a commission was appointed (whereof Sir W. Erle was chairman) to inquire into and report on the organization and rules of trades unions and other associations, whether of workmen or employers, and to inquire into and report on the effect produced by such trades unions and associations on the workmen and employers respectively, and on the relations between workmen and employers, and on the trade and industry of the country, with power to investigate any recent acts of intimidation, outrage or wrong alleged to have been promoted, encouraged, or connived at by such trades unions or other associations (*c*), and also to suggest any improvements to be made in the law with respect to the matters aforesaid, or with respect to the

a, 30 & 31 Vict. c. 105, repealed by the Conciliation Act, 1896, *post*, p. 653.

b, 30 & 31 Vict. c. 136, *post*, p. 512.

c, These outrages and the facts disclosed by the Reports of the Commissioners are elaborated into a Novel called "Put yourself in his Place," by C. Reade, which was dramatized under the name of "Free Labour."

relations between workmen and their employers for the mutual benefit of both parties.

Shortly after the issuing of this commission, "The Trades Union Commission Act, 1867" (30 Vict. c. 8), was passed, and three commissioners appointed under it for the purpose of making a searching inquiry into a case of outrage which had been committed in the town of Sheffield, and the alleged complicity of the trades unions therein.

This Act was subsequently extended by 30 & 31 Vict. c. 74, and three more commissioners were appointed to conduct a similar inquiry with respect to Manchester and its neighbourhood.

Both these sets of commissioners made reports which were presented to Parliament, and are reprinted in the Appendix to the Report of the Trades Union Commissioners, who made their final report on the 9th March, 1869. After which "The Trades Unions Funds Protection Act" (d) was passed. That Act was, however, repealed in 1871, and "The Trade Union Act, 1871" (e), and "The Criminal Law Amendment Act, 1871" (f), were passed. In 1872 a great strike of gas stokers took place (g). And the Acts of 1871 not proving sufficient or satisfactory another Royal Commission was appointed 19th March, 1874, to inquire into the working of "The Master and Servant Act, 1867," and of "The Criminal Law Amendment Act, 1871." Their final report was made on 17th February, 1875, and in that year "The Master and Servant Act, 1867," and "The Criminal Law Amendment Act, 1871," were repealed, and "The Conspiracy and Protection of Property Act, 1875" (h),

(d) 32 & 33 Vict. c. 61.

(e) 34 & 35 Vict. c. 31, *post*, p. 546.

(f) 34 & 35 Vict. c. 32.

(g) *R. v. Bunn*, 12 Cox, C. C. 316. In *Pointon v. Hill*, 12 Q. B. D. 306, it was held that workmen on strike begging could not be convicted as "idle and disorderly" persons.

(h) 38 & 39 Vict. c. 86, *post*, Appendix, p. 572.

and "The Employers and Workmen Act, 1875" (i), were passed: and in the following year "The Trade Union Act, 1871," was amended by "The Trade Union Act (1871) Amendment Act, 1876" (j).

In 1877 a Select Committee, which had been appointed in the previous Session, was re-appointed to inquire into the liability of Employers for injuries to their Servants. Their report, which was made on 25th June, 1877, resulted, after several bills had been introduced into the House of Commons, in the passing of "The Employers Liability Act, 1880" (k). The Act was to continue in force only till the end of the year 1887, but each subsequent year it has been continued for one year more, and will now expire on the 31st December, 1902.

A great change in the law was introduced by the Workmen's Compensation Act, 1897. The Act only applies to a limited number of employments, but a workman injured by accident in the course of any of the employments there mentioned becomes entitled to compensation from his employer, though the employer has not been guilty of any negligence causing the injury. In 1900, the benefits of this Act were extended to workmen employed in agriculture. Both Acts will be found in the Appendix. It is to be observed that the compensation obtainable under these Acts is calculated upon a much narrower basis than the damages which a jury may give in an ordinary action for negligence. The amount which a workman may be awarded under the Act is to be calculated solely upon the basis of the average weekly earnings which he had received from the employer in whose service he has been injured, or upon a calculation of the loss of wages which, but for the injury, he would have received from such employer.

(i) 38 & 39 Vict. c. 90, *post*, Appendix, p. 577.

(j) 39 & 40 Vict. c. 22, *post*, Appendix, p. 585.

(k) 43 & 44 Vict. c. 42, *post*, Appendix, p. 590.

A TREATISE

ON

THE LAW OF MASTER AND SERVANT.

CHAPTER I.

THE PARTIES TO THE CONTRACT.—WHO MAY CONTRACT
THE RELATIONSHIP OF MASTER AND SERVANT.

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GENERALLY.

CONTRACTS of hiring and service, like the generality of contracts, may be entered into by any one, either as master or servant. But as certain classes of persons are subject to special rules with regard to their capacity to bind themselves by contract, it will be well to refer briefly to the positions held by such persons (*a*).

Parties to the contract.

(*a*) Except in the case of apprentices (3 Will. & Mary, c. 11, and 31 Geo. 2, c. 11) no settlement can be gained by hiring and service since 14th August, 1834 (4 & 5 Will. 4, c. 76, s. 64). But before that date it was held that the person who hired himself out as a servant must, in order to acquire a settlement under that hiring, have been at the time of hiring disincumbered from any other relation which might interfere with or defeat the performance of his engagement, such as an existing contract to serve another master. *R. v. Hindringham*, 6 T. R. 557; *R. v. Stowmarket*, 9 East, 211; *R. v. Danton*, 15 East, 352; *R. v. Norton*, 9 East, 206; *R. v. Beaulieu*, 3 M. & S. 229; *R. v. Westerleigh*, Burr. 753; *R. v. Holsworthy*, 6 B. & C. 283; *R. v. Elmley Castle*, 3 B. & Ad. 826; *R. v. Witlesham*, 2 A. & E. 648.

Ministerial
public officer
may appoint
a deputy.

Judge
cannot.

For all ministerial acts, which require no exercise of judgment or discretion, every public officer may appoint a deputy or servant (*b*), unless required by the statute under which they are appointed to execute their duties in person, as in the case of clerks in the Master's Office (*c*), clerk of the Parliaments (*d*), &c. Thus a sheriff, or churchwarden, or overseer may depute the execution of warrants to others. But an officer whose duties are of a judicial character cannot act by deputy (*e*), unless empowered to do so by Act of Parliament; as County Court judges (*f*) and recorders (*g*) are empowered to do in certain cases.

MARRIED WOMEN.

By the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), which came into force on 1st January, 1883, it is enacted :

Married
women to be
capable of
holding pro-
perty and of
contracting as
a *feme sole*.

Sect 1. (1) A married woman shall, in accordance with the provisions of this Act, be capable of acquiring, holding and disposing by will or otherwise of any real or personal property as her separate property in the same manner as if she were a *feme sole*, without the intervention of any trustee.

(2) A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued either in contract or in tort or otherwise, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant or be made a party to any action or legal proceeding brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property and not otherwise.

[Sub-sects. (3) and (4) were repealed by the Married Women's Property Act, 1893, *post*.]

(*b*) *Phelps v. Winchcomb*, 3 Bulstr. 77; *Walsh v. Southworth*, 6 Exc. 150.

(*c*) 7 Will. 4 & 1 Vict. c. 30, s. 13, which was *not repealed* by "The Supreme Court of Judicature (Officers) Act, 1879" (42 & 43 Vict. c. 78). See the Second Schedule.

(*d*) 5 Geo. 4, c. 82, s. 2.

(*e*) Roll. Abr. 591, tit. "Deputie"; Bac. Abr. "Offices and Officers" (I.).

(*f*) 51 & 52 Vict. c. 43, s. 18.

(*g*) 45 & 46 Vict. c. 50, s. 166.

2. Every woman who marries after the commencement of this Act shall be entitled to have and to hold as her separate property and to dispose of in manner aforesaid all real and personal property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage, including any *wages, earnings*, money and property gained or acquired by her in any employment, trade or occupation in which she is engaged or which she carries on separately from her husband, or by the exercise of any literary, artistic or scientific skill.

5. Every woman married before the commencement of this Act shall be entitled to have and to hold and to dispose of in manner aforesaid as her separate property all real and personal property her title to which, whether vested or contingent, and whether in possession, reversion or remainder, shall accrue after the commencement of this Act, including any *wages, earnings*, money and property so gained or acquired by her as aforesaid.

Property of a woman married after the Act to be held by her as a *feme sole*.

Property acquired after the Act by a woman married before the Act to be held by her as a *feme sole*.

The Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), repealed sub-sects. (3) and (4) of sect. 1 of the Married Women's Property Act, 1882, and provided as follows :

Sect. 1. Every contract hereafter entered into by a married woman otherwise than as agent,

Effects of contracts by married women.

- (a) shall be deemed to be a contract entered into by her with respect to and to bind her separate property whether she is or is not in fact possessed of or entitled to any separate property at the time when she enters into such contract ;
- (b) shall bind all separate property which she may at that time or thereafter be possessed of or entitled to ; and
- (c) shall also be enforceable by process of law against all property which she may thereafter while discoverd be possessed of or entitled to ;

Provided that nothing in this section contained shall render available to satisfy any liability or obligation arising out of such contract any separate property which at that time or thereafter she is restrained from anticipating.

The result of these enactments is that since 1893 every contract entered into by a married woman, otherwise than as an agent, will be entered into by her as if she were a *feme sole*, and will bind her personally; and a judgment against her, though enforceable only against her separate estate not subject to a restraint on anticipation, is precisely the same as a judgment against an unmarried woman (*h*).

(*h*) *Pelton Brothers v. Harrison*, (1892) 1 Q. B. 118.

Liability of
husband
depends on
wife's agency.

The liability of a husband upon a contract entered into by his wife when they are living together, depends entirely upon the question whether the wife was his agent and had authority from him to enter into the contract. The fact of marriage only does not make a wife the agent in law of her husband, except in the particular case of necessity which may arise when the husband has compelled his wife to live apart from him without properly providing for her (*i*).

Where there
is cohabitation.

The authority given by the husband to the wife to make contracts on his behalf may be express or implied from circumstances. Whether the circumstances are such as to raise the implication of his having given such authority is a question of fact (*j*), and if there is no reasonable evidence upon which the jury can act, the judge is justified in withdrawing the case from the jury and giving judgment for the defendant (*k*). From the circumstances of cohabitation (*l*) where the husband is keeping up a household establishment, the wife may be presumed, as manager of the household, to have the authority of her husband to pledge his credit to a reasonable extent for such matters as the hiring of domestic servants necessary or suitable to the style in which he chooses to live (*m*).

If the husband has done nothing by way of holding out his wife as his authorized agent for any particular purpose, and has not ratified a contract she has made on his behalf, the presumption arising from cohabitation may be refuted by showing that he had expressly

(*i*) *Manby v. Scott*, 2 Smith's L. C.; *Eastland v. Burchell*, 3 Q. B. D. 432; *Debenham v. Mellon*, 6 App. Cas. 24.

(*j*) *Debenham v. Mellon*, 6 App. Cas. 21.

(*k*) *Phillipson v. Hayter*, L. R. 6 C. P. 38.

(*l*) See *Etherington v. Porvott*, 1 Salk. 118; *Jewsbury v. Newbold*, 26 L. J., Ex. 247; *Manby v. Scott*, 2 Smith, L. C. This presumption of agency arising from cohabitation is not confined to the case of a lawful wife; it extends to the case of a woman with whom the defendant cohabits, although not his wife, *Watson v. Threlkeld*, 2 Esp. 637; *Blades v. Tree*, 9 B. & C. 167.

(*m*) *Jolly v. Rees*, 15 C. B., N. S. 628; *Phillipson v. Hayter*, L. R., 6 C. P. 38.

forbidden his wife to hire the servant (*u*), or by showing that he had allowed and paid his wife an adequate sum for the payment of necessary expenses (*o*).

Where the husband and wife do not cohabit there is no presumption that the wife has authority to bind her husband, even for necessities suitable to her degree in life; it is for the plaintiff to show that under the circumstances of the separation, or from the conduct of the husband, she had such authority (*p*). If she leave her husband without cause and without his consent, she carries no implied authority with her to maintain herself at his expense. But if he wrongfully compels her to leave his home, he is bound to maintain her elsewhere (*q*). If she is turned away by her husband without justifiable cause, and she is without reasonable means of supporting herself, the husband is bound by any contract she makes for necessities suitable to her degree and estate (*r*).

A married woman, professing to make a contract on behalf of her husband, but having no express or implied authority from him to do so, would be under the same liability as any other agent making a contract on behalf of a principal without his authority (*s*). In such case the remedy is by an action against the agent for breach of an implied warranty of authority. Although a husband is not liable on his wife's contract, he is liable for any fraud or other tort committed by her during the coverture, unless it is directly connected with the contract, and is the means of effecting or inducing it, and is part of the same transaction (*t*).

(*n*) *Etherington v. Parrott*, 1 Salk. 118; *Jolly v. Rees*, 15 C. B., N. S. 628.

(*o*) Lord Selborne, L. C., in *Debenham v. Mellon*, 6 App. Cas. 24.

(*p*) *Mainwaring v. Leslie*, M. & M. 18; *Ozard v. Darnford*, Selw. N. P. 294.

(*q*) *Eastland v. Burehell*, 3 Q. B. D. 432.

(*r*) *Clifford v. Laton*, M. & M. 101; *Mizen v. Pick*, 3 M. & W. 481; *Bazeley v. Forder*, L. R., 3 Q. B. 559; *Wilson v. Glossop*, 20 Q. B. D. 354.

(*s*) See, *post*, the chapter on the servant's liability to third persons in cases of contract.

(*t*) *Wright v. Leonard*, 11 C. B., N. S. 258; *Earle v. Kingscote*, (1900) 2 Ch. 585.

INFANTS.

Although infants labour under a general incapacity to enter into *absolutely* binding contracts with other persons (*u*), yet they may make some contracts which will be binding upon them until avoided by them (*v*); such as contracts for their benefit (*w*). Infants may also make contracts for necessities, which will be absolutely binding upon them (*x*).

What are
necessaries.

What are necessities is a mixed question of law and fact (*y*), and will be decided by the Court and jury taking into consideration such things as the station in life of the infant (*z*).

Livery for
servants of
captain in the
army.

Livery for the servants of an infant, who was a captain in the army, has been held to come within the description of necessities, and the infant was held liable to pay for it (*a*). Similar principles would apply to a claim for wages.

Education is a necessary for an infant. What particular kind of education is necessary is a question for the jury, having regard to the infant's condition in life. Therefore, where an infant executed an apprenticeship deed by which he covenanted to pay the balance of a certain premium three years after date, and the jury found that the arrangement was provident and proper for him and that the premium was fair and reasonable, and that instruction had been given under the deed, it was held that he was liable to pay the premium, as being a necessary, and the fact that he had entered into a

(*u*) Bac. Abr. tit. "Infancy," I.

(*v*) Third persons cannot avoid contracts entered into by infants, on the ground that they are not for the infant's benefit, *Douglas v. Watson*, 17 C. B. 685. When an infant *can* avoid a contract he must do it within a reasonable time of coming of age, *Dublin and Wicklow Railway Co. v. Black*, 8 Exc. 181; *Carter v. Selby*, 1892, 2 Ch. 278.

(*w*) *Maddon v. White*, 2 T. R. 159; *R. v. Shingfield*, 14 East, 541; *Martin v. Gale*, 4 Ch. D. 428.

(*x*) Bac. Abr. tit. "Infancy," I. 1; and see *Zouch v. Parsons*, 3 Burr. 1801.

(*y*) *Wharton v. Mackenzie*, 5 Q. B. 612.

(*z*) *Peters v. Fleming*, 6 M. & W. 46; *Wharton v. Mackenzie*, *ubi supra*; *Chapple v. Cooper*, 13 M. & W. 252; *Johnstone v. Marks*, 19 Q. B. D. 509.

(*a*) *Hands v. Slaney*, 8 T. R. 578; *Chapple v. Cooper*, 13 M. & W. 252.

covenant under seal for the payment of it did not prevent his being liable (*b*).

A contract of apprenticeship is generally to be regarded as for the benefit of an infant, and, therefore, he may make a legal binding contract of apprenticeship (*c*). If he could not do so, he could not be bound at all, for a father has no common law authority to bind his infant son an apprentice without his consent (*d*).

Contracts beneficial to infant.

Contract of apprenticeship.

A contract of apprenticeship is not invalid by reason of the fact that the master to whom the apprentice is bound is a corporation (*e*).

So a contract of hiring and service may be beneficial to an infant, and would, generally speaking, be binding upon him, and may be made even with his own father (*f*) or mother (*g*). Such a contract would subject him to the statutable regulations applicable to masters and servants, although he might not be liable to any action upon the contract (*h*). And it would give him a right of action for wages earned (*i*). For if an infant of five years of age,

Contracts of hiring and service.

(*b*) *Walter v. Everard*, (1891) 2 Q. B. 369.

(*c*) *R. v. St. Petros*, 4 T. R. 196; *R. v. Arundel*, 5 M. & S. 257; *Cooper v. Simmons*, 31 L. J., M. C. 138; *De Francesco v. Barnum*, 45 Ch. D. 430. In order to make it binding, however, he must execute the contract (as an adult must also, *R. v. Ripon*, 9 East, 295). It is not sufficient for the father and master to execute, *R. v. Cromford*, 8 East, 25; *R. v. Arnesby*, 3 B. & Ald. 584; *St. Nicholas, Rochester v. St. Botolph, Bishopsgate*, 31 L. J., M. C. 258. But he may execute by the hand of a third party, *R. v. Longnor*, 4 B. & Ad. 647.

(*d*) *R. v. Arnesby*, 3 B. & Ald. 584. The reason why the father or friend generally joins in a contract of apprenticeship, is because an action of covenant will not lie against an infant apprentice for not serving; see *Y. B.*, 21 Hen. 6, 31; *Gylbert v. Fletcher*, Cro. Car. 179; *Capes v. Hutton*, 2 Russ. 357; *De Francesco v. Barnum*, 43 Ch. D. 165. Though it appears to be otherwise by the custom of London, *Horn v. Chandler*, 1 Mod. 271; and see *Ex parte Eden*, 2 M. & S. 226; Com. Dig. "Justices of the Peace," B. 55; *Beard v. Webb*, 2 B. & P. 99. Any action for breach of the contract on the part of the infant should be against the father where he joins, *Branch v. Ewington*, 2 Dong. 518. Where the deed is still in force the master can only recover damages up to the time of issuing the writ, not prospective damages, *Lewis v. Peacey*, 31 L. J., Exc. 496. To such an action it is no answer that it was the master's duty to compel service, *Hughes v. Humphreys*, 6 B. & C. 687; nor that the son avoided the indenture after he came of age, *Cuming v. Hill*, 3 B. & Ald. 59; see also *Ellen v. Topp*, 6 Exc. 424; *Phillips v. Clift*, 4 H. & N. 168.

(*e*) *Burnley Equitable Co-operative Society v. Casson*, (1891) 1 Q. B. 75.

(*f*) *R. v. Chillesford*, 4 B. & C. 94.

(*g*) *Gilbert v. Schwenck*, 14 M. & W. 488.

(*h*) *R. v. Chillesford*, *ubi supra*; *Wood v. Fenwick*, 10 M. & W. 204.

(*i*) *Ibid.* In America a minor cannot sue for wages unless his father has

or other person who is *non potens in corpore*, be retained and serve in the best manner he can, his master must pay him his wages (*j*).

Beneficial
contracts
binding on
infant.

Difficult questions sometimes arise whether or not an agreement of hiring and service of an infant is so beneficial as to be binding upon him. It is impossible to frame a deed between a master and an apprentice in which some stipulations are not in favour of the master. When any stipulation is relied upon by the infant as being unfair to him, it is the duty of the Court to decide on the construction of the whole contract, and then to say whether, as a whole, it is clearly and manifestly for the benefit of the infant. The question is whether the agreement taken as a whole is so much to the detriment of the infant as to render it unfair that he should be bound by his agreement. If there is any stipulation such as to make the whole contract an unfair one, then the whole contract is void (*k*).

Wood v.
Fenwick.

A contract of hiring and service for wages has been considered beneficial to, and binding upon, an infant, although it contained clauses for referring disputes to arbitration, and for the imposition of forfeitures in case of neglect of duty, to be deducted from the wages (*l*). But it has been held that a contract by an infant binding himself to serve during a certain time for wages, but enabling the master to stop the work whenever he chose, and retain the wages during the stoppage, is wholly void, as not being beneficial to the infant (*m*).

R. v. Lord.

But an agreement by which it was provided that the

given him his time, or emancipated him, *Stiles v. Granville*, 6 Cush. Rep. 458. But where the father was dead and the mother was insane, a minor was regarded as emancipated, and allowed to recover, *Jenness v. Emerson*, 15 New Hamp. Rep. 486.

(*j*) Dalt. Just. Ch. 58; Bro. tit. "Labour," 46; Bac. Abr. tit. "Master and Servant;" and see *Phillips v. Jones*, 1 A. & E. 333.

(*k*) *Corn v. Matthews*, 1893 1 Q. B. 310; *Flower v. London and North Western Railway Co.*, 1894 2 Q. B. 65; *Clements v. London and North Western Railway Co.*, 1894 2 Q. B. 482.

(*l*) *Wood v. Fenwick*, 10 M. & W. 195.

(*m*) *R. v. Lord*, 12 Q. B. 757; *Meakin v. Morris*, 12 Q. B. D. 352; *Corn v. Matthews*, 1893 1 Q. B. 310.

apprentice should not be bound to serve on such days as the master's business should be at a standstill through accident beyond the control of the master, and that on such days the master should not be liable to pay the apprentice any wages, was held not to be an unfair one for the infant (*n*).

Nor an agreement by which it was provided that the employers might terminate it and discharge the apprentice on fourteen days' notice, should they cease to carry on business or find it necessary to reduce the operations of their works, either temporarily or permanently, in consequence of being unable to obtain materials or in consequence of any accident or strikes of workmen, or from any cause beyond their control (*o*).

So, too, an agreement to pay a premium (*p*), and an agreement in consideration of being employed as a milk carrier not to compete in business within a radius of five miles for two years after leaving (*q*) were held to be fair to the infant (*r*).

By the County Courts Act, 1888 (*s*), it is provided that, "it shall be lawful for any person under the age of twenty-one years to prosecute any action in the Court for any sum of money, not greater than fifty pounds, which may be due to him for wages, or piecework, or for work as a servant, in the same manner as if he were of full age."

Infants may sue for wages in County Court.

Women and children being considered to require legislative protection and control whilst entering into contracts of hiring and service, various Acts of Parliament have at different times been passed for this purpose, which are referred to in the note (*t*), and

Statutes for protection and control of women and children.

(*n*) *Green v. Thompson*, (1899) 2 Q. B. 1.

(*o*) *Leslie v. Fitzpatrick*, 3 Q. B. D. 229.

(*p*) *Walter v. Everard*, (1891) 2 Q. B. 369.

(*q*) *Evans v. Ware*, (1892) 3 Ch. 502.

(*r*) In *De Francesco v. Barnum*, 45 Ch. D. 420, and *Flower v. London and North Western Railway Co.*, (1894) 2 Q. B. 65, the contracts were held to be unfair and not binding on the infant.

(*s*) 51 & 52 Vict. c. 43, s. 96.

(*t*) See, as to Parish Apprentices, 43 Eliz. c. 2, s. 5; 18 Geo. 2. c. 47; 42 Geo. 3, c. 45 [sect. 8 repealed, 35 & 36 Vict. c. 63, and see 47 & 48 Vict.

some of which will be found printed at length in the Appendix.

Enlistment of
apprentice.

An apprentice who has been attested as a soldier of the regular forces may, under certain conditions, be claimed by his master (*u*).

LUNATICS.

Lunatics.

The position of a lunatic or person of unsound mind is considered in general to bear some analogy to that of an infant in regard to his liability upon contracts (*r*). For although, strictly speaking, a person of unsound mind is incompetent to contract (*w*), yet there can be no doubt that a lunatic would be held liable to pay for any services which *had been* rendered to him, provided they were such as might reasonably be considered *necessary* for a person in his station in life. In such a case the law would hold him liable to pay for them (*x*). And modern cases show that when a party entering into a contract is a lunatic, but the state of his mind is unknown to the other party, who has taken no advantage of the lunatic, he would not be allowed to set up his lunacy as a defence to an action on the contract, especially in a case where the contract was not merely executory, but

c. 43]; 56 Geo. 3, c. 139 [sect. 1 repealed, 39 & 40 Vict. c. 61, s. 27, and see 47 & 48 Vict. c. 43]; 3 & 4 Will. 4, c. 63; 4 & 5 Will. 4, c. 76, ss. 15, 61; 7 & 8 Vict. c. 101, s. 12; as to Apprentices to Sea Service, 14 & 15 Vict. c. 35, s. 10 (the rest of that Act being repealed), Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60); as to Apprentices to Watermen, &c., on the Thames, 22 & 23 Vict. c. cxxxiii, s. 48 *et seq*; as to Chimney Sweeps, 3 & 4 Vict. c. 85 (see *R. v. Hipswell*, 8 B. & C. 466); 27 & 28 Vict. c. 37; 38 & 39 Vict. c. 70; 47 & 48 Vict. c. 43; as to Employment of Women and Children, see the Agricultural Gangs Act, 1867; the Metalliferous Mines Act, 1872; the Coal Mines Regulation Act, 1887; the Shop Hours Act, 1892; and the Factory and Workshop Act, 1901, which are all printed in the Appendix. See also the Elementary Education Act, 1876 (39 & 40 Vict. c. 79), ss. 6 and 47; *Mather v. Lawrence*, (1899) 1 Q. B. 1000.

(*u*) Army Act, 1881 (44 & 45 Vict. c. 58), s. 96, extended to the militia by the Militia Act, 1882 (45 & 46 Vict. c. 49), s. 9.

(*r*) *Wentworth v. Tubb*, 1 Y. & C. N. C. 171.

(*w*) See Chit. on Contr. 129 *et seq*. The maxim of the Roman law was—*"Furiosus nullum negotium gerere potest, quia non intelligit quod agit."* Inst. lib. 3, tit. 20, s. 8.

(*x*) *Barter v. Earl Portsmouth*, 5 B. & C. 170; *Re Rhodes*, 44 Ch. Div. 94

executed in the whole or in part, and the parties could not be restored altogether to their original position (y).

PARTNERS.

By the Partnership Act, 1890 (53 & 54 Vict. c. 39), it is provided :— Partners generally.

Sect. 5. Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership ; and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member, bind the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority or does not know or believe him to be a partner.

With regard to hiring and dismissing clerks and servants, each partner would, generally speaking, have authority to hire and discharge such servants as might be necessary for the purpose of carrying on the business of the partnership. Power of hiring and dismissing servants.

Where, therefore, one partner gave a weekly servant due notice to quit, but the other partner afterwards authorized him to remain in the house where the partnership business was carried on, and of which the partners were joint tenants, it was held that such remaining was lawful, and that the partner who gave the notice to quit was not justified in turning the servant out by force on his refusing to go peaceably, as the rights of the partners were co-extensive (z). Donaldson v. Williams.

And where the purser of a mine, who was also one of the adventurers, in pursuance of a resolution of shareholders, deposited the account-books of the mine with an accountant to examine the accounts, it was held that the purser could not *alone* bring an action for the recovery of Atwood v. Ernest.

(y) *Molton v. Camroux*, 2 Exc. 487 ; 4 Exc. 17 ; *Read v. Legard*, 6 Exc. 636 ; *Beavan v. McDonnell*, 9 Exc. 309 ; *Imperial Loan Co. v. Stone*, (1892) 1 Q. B. 599.

(z) *Donaldson v. Williams*, 1 Cr. & M. 345. See *Read v. Coker*, 13 C. B. 850 ; where two partners quarrelled, and one, with the aid of his servants, turned the other out.

the books which the accountant detained by the license, as he alleged, of the other adventurers (a).

Liability of partners for negligence of one partner causing injury to servant of firm.

We shall hereafter, when treating of the liability of a master for the negligence of his servants, see that a master is not generally liable to one servant for injuries caused through the negligence of a fellow servant (b). But that principle does not apply where the fellow servant is also the master, or one of several partners who are the masters of the injured servant.

Ashworth v. Stanwix.

In a case (c), therefore, where two men were lessees of a coal-pit, and one of them acted as banksman at the mouth of the shaft, and whilst so acting was guilty of negligence whereby the plaintiff, a pitman, was injured, it was held that *both* the lessees were liable for the injury; Crompton, J., saying,—

“The relation of master and servant does not the less subsist because by some arrangement between the joint masters one of them takes upon himself the functions of a workman. It is a fallacy to suppose that on that account the character of master is converted into that of a fellow labourer. Though engaged with the plaintiff in a common employment W. did not the less remain the master of the plaintiff and the partner of the defendant S. This being so, it follows that S. must be liable in respect of the negligence through which injury has arisen to the plaintiff, as the relation of partner subsisted between W. and S.; and as the negligence was in a matter within the scope of a common undertaking, we think that S. is equally liable with W. That a partner is liable for the negligence of his co-partner when engaged in the business of the partnership is not only clear in principle but is established by the case of *Moreton v. Harder* (d) in this Court, where two proprietors of a stage coach were held liable with a third for the negligence of the latter, by whom the coach had been driven. Now it has never been doubted that for personal negligence of the master, whereby injury is occasioned to the servant, the master will be liable. Personal negligence is clearly established against W., and it being admitted that the defendant S. was his co-proprietor and partner the latter must be held to be jointly responsible in respect of such negligence, and is therefore liable in this action.”

(a) *Atwood v. Ernest*, 13 C. B. 881.

(b) *Frost, Chapp. IV.*

(c) *Ashworth v. Stanwix*, 30 L. J., Q. B. 183; *Mellors v. Shaw*, 30 L. J., Q. B. 533. See *Burnard v. Aagon*, 31 L. J., C. P. 331, where one of two joint owners of a ship was held not liable for the negligence of the other, who, under the circumstances, was held to have *loved* the whole ship, and so to be solely liable.

(d) 4 B. & C. 223.

Whether or not a dissolution of partnership would be a breach of a contract by a firm to retain a person in their service for a lengthened period at an increasing salary may be doubted (*e*); but a dismissal by one of the remaining partners would clearly be so. And where a person entered into the service of a firm as manager for seven years at a salary increasing every year up to 190*l*. per annum, but shortly afterwards, upon a change in the firm, signed a memorandum, "In consideration that a new agreement is entered into with the new firm at a salary of 180*l*. a year, I am willing to cancel the present agreement with C. and M." (the old firm), and afterwards continued in the service of the new firm from August to April, at a salary of 180*l*. a year, and the jury found that there was a new agreement with the new firm, it was held, in an action against C. and M. for wrongful dismissal, that the new agreement was an implied surrender of the first, and was good evidence in support of a plea of exoneration before breach (*f*).

Effect of dissolution of partnership or change of firm on contracts of hiring.

Hobson v. Cowley.

A., B. and C. were partners in trade, and in July, 1838, by an agreement in writing, engaged to employ the plaintiff, and he to serve them, as their foreman for twelve years at two guineas a week, with perquisites. In 1843, the firm got into difficulties, and the concern was closed. A fiat in bankruptcy was sued out against them, and notice was given to the plaintiff by the assignees not to come again upon the premises. In November, 1838, C. had retired from the firm, and the business was carried on by A. and B., and the plaintiff had continued to serve them. The plaintiff sued A., B. and C. upon the original agreement, which, on their behalf, was contended to have been rescinded, but Coltman, J., held the defence not to be made out, and said, "C.'s going out of the concern did

Dobbin v. Foster.

(*e*) See *Lloyd v. Blackburn*, 9 M. & W. 363, where the question arose on dissolution of partnership between masters of an apprentice; and *Popham v. Jones*, 13 C. B. 225, where A. was bound apprentice to two masters not in partnership.

(*f*) *Hobson v. Cowley*, 27 L. J., Exc. 205; and see *Robson v. Drummond*, 2 B. & Ad. 303.

not *per se* put an end to the agreement; and as by that agreement the plaintiff had engaged to serve for a certain period, it appears to me that he was bound to continue in the service of A. and B., and that therefore it cannot be implied from this circumstance that the original contract was rescinded" (*g*).

Death of
partner.

A dissolution of partnership may occur in consequence of the death of one of the partners or of the firm ceasing to carry on business, but whether such a dissolution would be a breach of a contract by the members of the firm to employ a servant for a definite period must depend on the intention of the parties to the contract as there expressed by them. It may be that the contract was of such a personal nature that there was implied (*h*) in it a condition that its continuance should be subject to all the parties to it remaining alive (*i*). Where a servant entered into a contract with "the Alhambra Palace Company," which was in fact a partnership of three persons, though the servant was not aware of that fact when he entered into the contract with them, it was held that the contract of service was not of such a personal nature as to be put an end to by the death of one of the three partners (*k*). A partnership of four members agreed to employ B. as their manager for a term of two years. He entered their service and shortly afterwards two of the partners retired, and the business was transferred to the other two, who continued to carry it on under the same name. It was held by the Court of Appeal (Lopes and Rigby, L. JJ., Lord Esher, M. R., dissenting), that the dissolution of the partnership operated as a wrongful dismissal of B. (*l*).

Effect of
change of firm

It may be convenient to refer here to the subject of

g *Dobbin v. Foster*, 1 C. & K. 323.

h As to the nature of implied terms in contracts, see *Hamlyn v. Wood*, (1891) 2 Q. B. 488.

i *Tasker v. Shepherd*, 6 H. & N. 575; *Hocv v. McEwan*, 5 Ct. Sess. Cas. 3rd Series, 814.

k *Phillips v. Alhambra Palace Co.*, (1901) 1 K. B. 59.

l *Brace v. Calder*, (1895) 2 Q. B. 253.

guarantees given by sureties to partners for the fidelity and good conduct of clerks and other officers and agents in the service of the partnership.

on fidelity bonds.

By the Partnership Act, 1890 (53 & 54 Vict. c. 39), it is provided :—

Sect. 18. A continuing guaranty or cautionary obligation given either to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of the transactions of which, the guaranty or obligation was given.

This provision, however, does not alter the law as previously settled by decided cases (*m*).

A fidelity bond for A. would not render the surety liable for the acts of A.'s partner (*n*).

Where there is a bond of suretyship for an officer, and by the act of the parties, or by Act of Parliament, the nature of the office is so changed that the duties are materially altered, so as to affect the peril of the sureties, the bond is avoided. Even if the sureties were consenting parties by parol to such a change, it could hardly affect their liability under the bond. The question is whether the nature and functions of the office or employment are changed, for if they are, it is not the same office within the meaning of the bond (*o*).

Alteration of duties, avoids bond.

If a surety makes himself responsible in general terms for the observance of certain relations between the parties in a certain contract between them, he will not be released by an immaterial alteration in that relation, that is to say, where it is evident without inquiry that the alteration is unsubstantial (*p*).

So a mere addition to the duties of the servant would

But mere addition to

(*m*) *Strange v. Lee*, 3 East, 484; *Dry v. Dary*, 10 A. & E. 30; *Mayor of Dartmouth v. Silly*, 7 E. & B. 97; *Backhouse v. Hall*, 34 L. J., Q. B. 141; *Lindley on Partnership*, 6th ed., p. 127.

(*n*) *London Assurance Co. v. Bold*, 6 Q. B. 514; *Montefiore v. Lloyd*, 15 C. B., N. S. 203.

(*o*) *Pybus v. Gibb*, 6 E. & B. 902; *Bonar v. Macdonald*, 3 Ho. Lords Cas. 226; *Guardians of Mulling Union v. Graham*, L. R., 5 C. P. 201.

(*p*) *Holme v. Brunskill*, 3 Q. B. D. 495.

duties does
not.

not affect the liability of the surety; as where a collector of poor and other rates was appointed to collect a main drainage rate; or a collector of rents in one county was appointed to collect rents in another county (*q*). And it has been held that an alteration of the length of notice determining the service from one month to three months was not so material as to discharge the surety, who when he entered into the guarantee was not aware of that term of the contract of service (*r*).

But where the bond recited the amount of the servant's salary, it was held that an alteration in the mode of payment discharged the surety (*s*).

Irregularities
of servant.

Where a collector had been guilty of irregularities in his mode of accounting it was held that his employer's mere passive acquiescence and omission to do anything did not discharge the collector's surety (*t*).

Nor is a surety discharged from liability, although his position has been altered by the conduct of the employer, where that conduct has been caused by a fraudulent act or omission of the contractor against which the surety guaranteed the employer (*u*).

But if the employer should fail to do something which he has contracted with the surety to do, or fails to preserve some security for the benefit of the surety, the surety would be discharged. So where a surety guaranteed the honesty of a servant, and the master, on discovering the servant had embezzled his money, failed to discharge the servant, as he had power to do, or to tell the surety, the surety was held to be discharged (*v*).

(*q*) *Skidlett v. Fletcher*, L. R., 1 C. P. 217; 2 C. P. 469.

(*r*) *Sanderson v. Aston*, L. R., 8 Ex. 73. But see *Holme v. Brunsell*, 3 Q. B. Div. 495.

(*s*) *North Western Railway Co. v. Whinray*, 10 Ex. 77.

(*t*) *Mayor of Durham v. Fowler*, 22 Q. B. D. 394.

(*u*) *Mayor of Kingston-upon-Hull v. Harding*, 1892, 2 Q. B. 494.

(*v*) *Phillips v. Foxall*, L. R., 7 Q. B. 666.

CORPORATIONS (*w*).

Contracts in general, in order to be binding upon a corporation, must be under the common seal of the corporate body (*x*). This rule is to be found in all the authorities (*y*), beginning with those collected from the *Year Books* in *Brooke's Abridgment*, tit. "*Corporations and Capacities*," down to the latest of the present day, the ground of the rule being, that, as a corporation is a body politic and invisible, it can only act and speak by its common seal; or, as it is said *arguendo* in *Rex v. Bigg* (*z*), "the common seal is the hand and mouth of the corporation."

Accordingly no municipal corporation (except London) (*a*) can appoint an attorney, except under the corporate seal.

Attorney to a corporation must be appointed by deed.

And, therefore, where (*b*) an attorney, who was town clerk and clerk of the peace, received instructions from the mayor and other members of the town council to take all necessary steps to oppose certain measures in Parliament, and to conduct certain suits in Chancery relating to the borough, but no authority was given to him under the seal of the corporation, it was held that

Arnold v. Mayor of Poole.

(*w*) See *Evans v. Hooper*, 1 Q. B. D. 45, an attempt by a manager of a mutual insurance association, having no Parliamentary power to sue on behalf of the members, to sue upon a contract on behalf of the members, which failed.

(*x*) Bae. Abr. "Corporations," E. 3; Com. Dig. "Franchise," F. 13. In *Mayor of Ludlow v. Charlton*, 6 M. & W. 815, it is shown that the doctrine is not, as it might appear, a mere relic of ignorant times. And see *Diggle v. London and Blackwall Railway Co.*, 5 Exe. 452. Where the corporation have acted on a contract entered into by an agent on their behalf (as by entering into possession of land and making a railroad upon it), they could not afterwards take advantage of the fact that the agent was not appointed under seal, *Wilson v. West Hartlepool Railway Co.*, 34 L. J., Ch. 241.

(*y*) *Gibson v. East India Co.*, 5 Bing. N. C. 269.

(*z*) 3 P. Wms. 423.

(*a*) In London the appointment is matter of record; see *Mayor of Tlleford's case*, 3 Salk. 103.

(*b*) *Arnold v. Mayor of Poole*, 4 M. & G. 860. In *Hall v. Mayor of Swansea*, 5 Q. B. 544, Patteson, J., said, "The only difference I see between *Arnold's case* and that of a servant employed at small wages is the comparative inconvenience of insisting on a contract under seal in the latter case."

he could not sustain an action against the corporation for his costs.

Town clerk
and clerk of
the peace.

Reg. v.
Mayor of
Stamford.

So where (c) a person, who, previously to the passing of the statute 5 & 6 Will. 4, c. 76 (now repealed), had held the offices of town clerk and clerk of the peace, and also clerk to the justices, was, after the passing of that statute, re-appointed to the offices of town clerk and clerk of the peace at an increased salary, by a resolution passed at a meeting, and entered upon the minutes of the town council; but there was no agreement under the seal of the corporation: it was held, upon issue joined on a return to a mandamus for compensation under 5 & 6 Will. 4, c. 76, s. 66, bringing in question the fact of the re-appointment, that it could not be proved by an entry in the minutes of the town council; and, therefore, although there was no doubt that an agreement to the effect contended for had been made, yet that it could not bind the corporation without being sealed.

Corn and coal
meter.

Smith v.
Cartwright.

And so it has been held (d) that a corn and coal meter to a corporation, who was entitled to receive for his own use certain fees for weighing coals from ships arriving at a port, must be appointed under seal, as he was an officer, and not a mere servant; and it was also held, that the tenure of his office, which was said to be during the pleasure of the corporation, did not make it unnecessary that he should have such an appointment, or convert him from an officer into a mere servant.

Solicitor to
company
Eley v. The
Positive, &c.
Assurance Co.

Upon similar principles where, in the articles of association of a company (afterwards incorporated), there was a clause providing that the plaintiff should be the solicitor for the company and should transact all the legal business of the company for the usual fees and charges, and should not be removed from his office unless for misconduct, which articles were signed by seven

(c) *R. v. Mayor of Stamford*, 6 Q. B. 433.

(d) *Smith v. Cartwright*, 6 Ex. 927: *quære*, whether a corporation, by prescription, might prescribe to do without seal certain corporate acts, which by the general law would require the use of a seal. *Ibid.* 939.

persons who became directors, but there was no appointment of the plaintiff under the seal of the company, it was held that the plaintiff could not sue the company for discontinuing to employ him and employing other solicitors (*e*).

Again, in the following case a local board were held not liable to pay an architect for plans which he had prepared under the directions of the defendant's surveyor, although the defendants knew of and sanctioned the employment of the plaintiff, as there was no contract under seal (*f*). By sect. 85 of the Public Health Act, 1848 (11 & 12 Vict. c. 63), every contract by the Local Board of Health whereof the value exceeds 10*l.*; and by sect. 174 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), every contract by an urban authority whereof the value exceeds 50*l.*, shall be in writing and sealed with the seal of such board or authority as the case may be. The defendants, who were a local board within sect. 85 and an urban authority within sect. 174, authorized their surveyor to employ the plaintiff, an architect, to prepare plans for intended necessary offices, which were not afterwards erected. But as there was no contract under seal they were held not liable to pay the plaintiff.

Architect to
local board.
Hunt v.
Wimbledon
Local Board.

But where a corporation made payments which were justly due for work actually done, it was held that they were justified in so doing, although there was no contract under seal binding them to make such payments (*g*).

Reg. v. Mayor,
&c. of Nor-
wich.

And where the Act of Parliament constituting a railway company enacted that the directors should have the management and superintendence of the affairs of the company, and might appoint and displace any of the officers of the company, it was held by Wightman, J., to be clear, that under that section the directors might

Attorney to
railway com-
pany under
their Act.

(*e*) *Eley v. Positive Government Security Life Assurance Co.*, 1 Ex. Div. 88.

(*f*) *Hunt v. Wimbledon Local Board*, 4 C. P. D. 48. And see *Eaton v. Basker*, 7 Q. B. D. 529; *Young v. Mayor, &c. of Royal Leamington Spa*, 8 App. Cas. 517; *Attorney-General v. Gaskill*, 22 Ch. D. 537.

(*g*) *R. v. Mayor, &c. of Norwich*, 30 W. R. 752.

appoint the officers of the company by parol, and if so, that they might appoint an attorney in the same way (*h*).

R. v. Lichfield. And where an attorney had been retained generally under the common seal of the borough, and had also been authorized and retained by a resolution of the town council, to take proceedings in opposition to a rule *nisi* for a mandamus, it was held that this was a sufficient retainer to warrant the payment to him of the costs of so doing (*i*).

Cases in which solicitors recovered against corporations, though not appointed under seal, explained.

There are, moreover, some cases (*j*) in which it has been held that the solicitors employed in obtaining the Acts of Parliament incorporating certain companies, had a legal claim against them when incorporated, in respect of their services in obtaining the Act of incorporation, although they were not, and, from the nature of the case, could not be, appointed under the seal of the corporate body. But in each of those cases there was a clause in the Act directing that the costs of obtaining the Act should be paid, in preference to all other claims, out of the first money received by the defendants: and those cases were decided on the ground, that the meaning of the Legislature was to make the incorporated companies, as soon as they had obtained funds, debtors to the solicitors who had obtained the Acts, for all the costs which they had incurred (*k*). Those cases do not, therefore, as at first might appear, form any exception to the general rule above stated.

Exceptions to general rule.

There are, nevertheless, some exceptions to that rule, probably coeval with the rule itself, in those matters which, from their very nature or necessarily frequent

(*h*) *R. v. Justices of Cumberland*, 5 D. & L. 431, note. And see *Faircliff v. Eastern Counties Railway Co.*, 2 Exc. 344, where it was held that defendant's attorney might consent to a judge's order to refer, although he had no authority under seal to defend or refer the cause.

(*i*) *R. v. Lichfield*, 10 Q. B. 534; and see *R. v. Prest*, 16 Q. B. 32.

(*j*) *Tilson v. Warwick Gas Light Co.*, 4 B. & C. 962; *Carden v. General Cemetery Co.*, 5 Bing. N. C. 253; *Hatchins v. Kilkenny Railway Co.*, 9 C. B. 536; *Wygatt v. Metropolitan Board of Works*, 31 L. J., C. P. 217.

(*k*) *Purdie v. Price*, 16 M. & W. 160.

occurrence, it would be difficult or, perhaps, impossible to execute with the formality of a seal. Those are matters of trifling importance and of frequent occurrence, such as the appointment of a servant, cook or butler, or such as from their nature do not admit of delay, such as the appointment of a bailiff to distrain cattle damage feasant (*l*). And it has been held, that a corporation was liable to an action for an illegal distress, though not damage feasant, by one who acted as their bailiff, although he was not appointed under seal (*m*). And that a corporation might maintain an action of ejectment after a notice to quit, given by a steward who was not appointed under seal (*n*).

Appointment
of servants.

But the above exceptions do not apply to cases in which an interest is vested in or divested out of a corporation; and, therefore, a corporation cannot, without deed, appoint a bailiff to seize goods as forfeited to the use of the corporation (*o*).

Exceptions
do not apply
where in-
terest vested
in corpora-
tion.

The cases, however, in which it has been held that a cook or butler, or other inferior servant to a corporation, need not be appointed under the common seal, are said to rest on a fiction that some individual has been duly authorized to make contracts of that nature on behalf of the corporation (*p*). And it has not yet been settled whether the exceptions introduced by them apply to the case of a corporation where no individual member is

Foundation
of exceptions.

(*l*) *Manby v. Long*, 3 Lev. 107; *Cary v. Matthews*, 1 Salk. 191. But it has been held that a clerk to the master of a workhouse at a salary of 52*l*. a year with board and lodging, whose duties were to keep the books of the master, was not within the exception, and not having been appointed under seal, could not maintain an action for wrongful dismissal, *Austin v. Guardians of St. Matthew, Bethnal Green*, L. R., 9 C. P. 91. And see *Marchant v. Lee Conservancy Board*, L. R., 9 Ex. 60, where it was held (reversing a decision of the Court of Exchequer), that a clerk to trustees of a river navigation could not sue for a pension granted him by a resolution of the trustees not under seal.

(*m*) *Smith v. Birmingham Gas Co.*, 1 A. & E. 526.

(*n*) *Roe v. Pierce*, 2 Campb. 96; and see *Doe v. Bold*, 11 Q. B. 127; *Low v. London and North Western Railway Co.*, 18 Q. B. 632; *Ecclesiastical Commissioners v. Merrill*, L. R., 4 Ex. 162.

(*o*) *Horne v. Ey*, 1 Mod. 18.

(*p*) See *per* Lord Cranworth in *Mayor of Ludlow v. Charlton*, 6 M. & W. 819, 821.

appointed head of the corporate body (*q*). When, however, the case shall arise, there can, it is conceived, be little or no doubt that the further development of the principles, founded on expediency and convenience, amounting almost to necessity, which have led, in England, to the engrafting of exceptions on the ancient rule of the common law, and, in America, to its total abolition (*r*), will lead to the conclusion that the exceptions above mentioned apply equally to the case of all companies, whether with or without a head.

Exception in cases of part performance.

There is another class of cases which may perhaps be regarded as forming an exception to the rule that corporations can only be bound by contracts under seal; those cases, namely, in which, by reason of part performance of a contract, the objection that the contract was not under seal cannot be set up against the corporation. But, as the equitable doctrine of part performance is not applicable to contracts of hiring and service (*s*), it is thought sufficient to refer to some of those cases in a note (*t*).

Not applicable to contracts of hiring and service.

Exception in cases of trading corporations.

There is also another class of exceptions to the rule, that corporations can only be bound by contracts under seal, which has arisen in modern times. Corporations have, of late, been established sometimes by Royal Charter, more frequently by Act of Parliament, for the purpose of carrying on trading speculations; and where the nature of their constitution has been such as to render the drawing of bills, or the constant making of any particular sort of contracts necessary for the purposes of the corporation, there the Courts have held, that they would imply in those

(*q*) *Per* Lord Wensleydale in *Cope v. Thames Haven Dock and Railway Co.*, 3 Ex. 841.

(*r*) Story on Agency, §. 53; 2 Kent's Comm. 288, 291 (Part 4, Lect. 33). In *Beverly v. Lincoln Gas Co.*, 6 A. & E. 837, Patteson, J., says, "There are obvious circumstances which justify their advancing with a somewhat freer step to the discussion of ancient rules of our common law than would be proper for ourselves."

(*s*) *Britain v. Rooster*, 11 Q. B. Div. 123.

(*t*) *Fishmongers' Co. v. Robertson*, 5 M. & Gr. 131; *Mayor, &c. of Kidderminster v. Hardwicke*, L. R., 9 Ex. 13, *et cas. ib. cit.*; *Hunt v. Wimbledon Local Board*, 4 C. P. D. 48.

who are, according to the provisions of the Charter or Act of Parliament, carrying on the corporation concerns, an authority to do those acts without which the corporation could not subsist (*u*).

Accordingly, in a variety of cases, corporations have been held bound by, and able to take advantage of, contracts necessarily incident to the purposes and objects for which the corporation was created, although such contracts have neither been under the corporate seal, nor entered into by an agent or servant authorized in that manner to act for the corporation. The exception established by these cases (*v*) depends upon the principle, before adverted to, of expediency and convenience, amounting almost to necessity—a principle, however, which, although in many cases applicable to contracts of hiring and service, yet it is conceived would only apply to contracts for services of an *ordinary* description, and such as might be necessary for carrying on the business of the corporation (*w*).

Contracts necessarily incident to purposes of corporation.

Thus, a contract made by the directors of a steam navigation company, incorporated for the purpose of trading as shipowners, to pay for services in bringing home a disabled vessel, has been held to be binding upon the company, though not under seal, as one of the most ordinary incidents to the ownership of trading vessels is the necessity of employing persons to bring home such vessels as may have been accidentally disabled at a distance from home (*x*).

Contract by shipping company to pay for bringing home disabled vessel;

(*u*) *Per* Lord Cranworth in *Mayor of Ludlow v. Charlton*, 6 M. & W. 821; and see *Beverley v. Lincoln Gas Co.*, 6 A. & E. 829; *Paine v. Strand Union*, 8 Q. B. 326; *Clarke v. Cuckfield Union*, 21 L. J., Q. B. 349; *Smart v. West Ham Union*, 10 Exc. 867; 11 Exc. 867; *Nicholson v. Bradfield Union*, L. R., 1 Q. B. 620; *Scott v. Great and Little Clifton School Board*, 14 Q. B. D. 500.

(*v*) Mr. Justice Story says truly “that this exception affords a beautiful illustration of the expansive power of the common law, which acquires flexibility and moulds itself from time to time, so as to accomplish the various ends of modern society.” Story on Agency, s. 53.

(*w*) *Dunston v. Imperial Gas Light and Coke Co.*, 3 B. & Ad. 125; see *Clarke v. Imperial Gas Light and Coke Co.*, 4 B. & Ad. 315, where it was held that the directors were justified in affixing the corporate seal to a deed granting a retiring pension to the plaintiff, who had been clerk to the company; and see *Gibson v. East India Co.*, 5 Bing. N. C. 271; *Beverley v. Lincoln Gas Co.*, 6 A. & E. 829; *Church v. Imperial Gas Co.*, 6 A. & E. 853.

(*x*) *Henderson v. Australian Royal Mail Steam Navigation Co.*, 5 E. & B.

by poor law
guardians
to pay for
auditing
clerk's ac-
counts ;

Upon similar principles in a case (*y*) in which the guardians of a Poor Law Union, having reason to believe that their clerk had been guilty of fraud, and that sums of money had been misappropriated, employed the plaintiff, who was an accountant, to audit their accounts, investigate them generally, and make up the books ; and resolutions to this effect were from time to time entered in the rough minute book ; but there was no contract under the seal of the guardians ; it was held by Erle, J. (though Crompton, J., doubted), that the plaintiff having done the work agreed upon was entitled to recover, although the contract was not under seal. And Erle, J., said, " Here the work which was done by the plaintiff was incidental and necessary to the purposes for which the corporation was created, and was done at the request of the corporation. They had appointed proper officers to do the work, and they had reason to believe that there had been fraud, embezzlement, and a system of false accounting. Then, by the first resolution, they employ the plaintiff as an accountant to audit the accounts of the union. These services were quite essential to the purposes for which the guardians were created, and the first of them would probably be of short duration and not very difficult. It seems to have been highly important that the investigation should be made, and the subsequent employment was of much the same description, arising upon subsequent inquiries being made, and it was ordered by the guardians. The question of fact is, was this done by the plaintiff for the effecting of the purposes for which the guardians were appointed ? It seems to me that it was." Crompton, J., however, thought otherwise, and was unable to distinguish the case from *The London Dock Company v. Sinott* (*z*).

409 ; and see *Reuter v. Electric Telegraph Co.*, 6 E. & B. 341 ; *South of Ireland Colliery Co. v. Waddle*, 1. R. , 4 C. P. 617, where the company were allowed to sue upon a contract not under seal, part of the consideration for which had been received by the defendant.

y *Hough v. North Buxley Union*, 28 L. J. Q. B. 62.

z 27 L. J. Q. B. 129.

That was an action by the dock company against the defendant for not performing a contract into which he had entered for scavenging the docks. But it was held by the Court of Queen's Bench that it could not be maintained, as the contract was not under the seal of the company; and the plaintiffs did not bring themselves within any of the exceptions to the general rule, that a corporation aggregate can only be bound by contracts under seal.

but not contract by dock company to pay for cleaning docks.

Contracts of this nature are, in many cases, regulated by the Companies Acts, 1862 and 1867 (*a*), and the Companies Clauses Consolidation Act, 1845 (*b*), which last applies to all joint stock companies incorporated by Act of Parliament for the purpose of carrying on any undertaking, so far as the same are applicable thereto, except so far as expressly varied by the special Act.

Contracts by joint stock companies.

By the 91st section of the Companies Clauses Consolidation Act, 1845, the determination as to the remuneration of the secretary of a company is to be exercised only at a general meeting. But it is no answer to an action by a secretary for his salary, that no determination as to such salary has ever been exercised at any general meeting of the company (*c*). It may be a breach of trust as between the directors and the shareholders to agree to give the secretary a salary without the authority of a general meeting, but yet the company may be bound to pay it.

Contracts by joint stock companies binding if within scope of company,

The principle of this decision is an important one, and is in conformity with the cases in which it was held that a joint stock company registered under 7 & 8 Vict. c. 110 (since repealed) was liable upon a contract within the scope and objects of the company *bonâ fide* entered into by the directors under seal, but not in conformity with the provisions of the deed of settlement of the company.

though not in conformity with deed of settlement,

(*a*) 25 & 26 Vict. c. 89; 30 & 31 Vict. c. 131, s. 37.

(*b*) 8 & 9 Vict. c. 16.

(*c*) *Bill v. Darent Valley Railway Co.*, 1 H. & N. 305.

if not illegal,

If such a contract were illegal, of course it would not be binding (*d*).

or *ultra vires*.

And although, generally speaking, where the seal is affixed to a contract made by a corporation in a manner binding upon them, the contract is the contract of the corporation, to be governed by the same rules of law as the contracts of private persons; yet, where a corporation is created by an Act of Parliament for particular purposes, with special powers, the contract does not bind them if it appear by the express provisions of the statute creating the corporation, or by necessary and reasonable inference from its enactment, that the contract was *ultra vires*, that is, that the Legislature meant that such a contract should not be made (*e*).

Power to appoint servants without seal only applies to ordinary servants.

It has been decided, that where the special Act of Parliament gave power to the directors of a company to appoint servants and workmen, &c., without using the corporate seal, they could only exercise that power with regard to the appointment of *ordinary* servants; and that it did not extend to enable them to enter into a contract for extraordinary services, which would be binding upon the company, without affixing the corporate seal (*f*).

Cox v. Midland Counties Railway Company.

The question as to how far the directors of a railway company had power, under their special Act, to appoint servants otherwise than by deed was raised in the case of *Cox v. Midland Counties Railway Company* (*g*), and

(*d*) *Agar v. Atheneum Life Assurance Society*, 3 C. B., N. S. 725; *Prince of Wales Assurance Society v. Harding*, 27 L. J., Q. B. 297, and cases there cited; *Re Atheneum Life Assurance Co.*, 27 L. J., Ch. 829. In these cases dissent from a dictum of Lord Wensleydale in *Ernest v. Nicholls*, 6 Ho. Lords Cas. 418, is expressed. See also *Atheneum Life Assurance Co. v. Pooley*, 28 L. J., Ch. 119; *Re Hercules Insurance Co.*, 19 Eq. 302, where articles of association provided that, when 3,000 shares should have been allotted, the members should be associated for the objects of the company, it was held that the allotment of the 3,000 shares was a condition precedent to the company being associated, and that the company were not liable for the salary of an engineer employed by the directors before the allotment of 3,000 shares. *Pierce v. Jersey Waterworks Co.*, L. R., 5 Ex. 209.

(*e*) *South Yorkshire Railway Co. v. Great Northern Railway Co.*, 9 Ex. 55; *Bateman v. Mayor of Ashton-under-Lyne*, 3 H. & N. 323; *Payne v. Mayor of Brecon*, 3 H. & N. 572.

(*f*) *Cope v. Thames Haven Dock and Railway Co.*, 3 Ex. 841.

(*g*) 3 Ex. 268.

the Court, in giving judgment (*h*), intimated an opinion that, under their Act, they probably did possess the power; but it became unnecessary to decide the point on that occasion, as it was held that, assuming the servant in that case to have been properly appointed, yet that he had not power to bind the company by entering into the contract on which the action was brought.

With regard to the liability of a corporation for wages for services rendered, there can be no doubt that at the present day they would be held to be liable to pay for them, although there was no contract under seal (*i*).

It has been laid down by all the judges in the Exchequer Chamber (*j*), that it is the duty of a company carrying on trade to have on the spot an officer with authority to do for the company all that in the ordinary exigencies of their business may require to be done promptly, and in this respect there is no difference between an ordinary partnership and a corporation; and that it was not necessary to show any authority under seal to the general superintendent of the company to render the company liable for acts which he was authorized to do.

Trading company bound to have authorized officer on the spot.

BANKRUPTS.

There are many reported cases in which attempts have been made to establish the doctrine, that whatever a bankrupt earns by his personal labour or ability after the bankruptcy belongs to him. It is unnecessary here to go into these cases, which were discussed in the Court of Appeal in a case (*k*) in which the considered judgment

Bankrupt's claim to his personal earnings.

(*h*) Page 274.

(*i*) See *Lowe v. London and North Western Railway Co.*, 18 Q. B. 632; *Hunt v. Wimbledon Local Board*, 4 C. P. D. 48.

(*j*) *Giles v. Taff Vale Railway Co.*, 2 E. & B. 822; and see *Birkett v. Hitchhaven Junction Railway Co.*, 28 L. J., Exc. 348; *Goff v. Great Northern Railway Co.*, 30 L. J., Q. B. 148; *Little v. Port Talbot Co.*, (1891) A. C. 499.

(*k*) *Re Roberts*, (1900) 1 Q. B. 122. A right of action for damages for trespass was held not to pass upon a bankruptcy to the bankrupt's trustee, *Rose v. Buckett*, (1901) 2 K. B. 449.

of the Court was delivered by Lindley, M. R. It was there laid down that in the face of sect. 44 of the Bankruptcy Act, 1883 (46 & 47 Viet. c. 52), it is impossible to maintain the proposition that property of a bankrupt acquired by his personal exertions since his bankruptcy and not wanted for his present support does not belong to his trustee. After bankruptcy and before his discharge, whatever property a bankrupt acquires belongs to his trustee, save only what is necessary for his support. He may sue for and recover his earnings if his trustee does not interfere, but what he recovers he recovers for the benefit of his creditors, except to the extent necessary to support himself and his wife and family. It may be (1) that a bankrupt's trustee cannot maintain an action for money earned by the bankrupt since his bankruptcy by his personal exertions, if such money is required by him for his personal support and maintenance.

The Bankruptcy Act, 1883 (46 & 47 Viet. c. 52), also provides by sect. 53, sub-sect. (1), that where a bankrupt is an officer of the army or navy, or an officer or clerk, or otherwise employed or engaged in the civil service of the Crown, the trustee shall receive for distribution amongst the creditors so much of the bankrupt's pay or salary as the Court, on the application of the trustee, with the consent of the chief officer of the department under which the pay or salary is enjoyed, may direct; and by sub-sect. (2), where a bankrupt is in the receipt of a salary or income other than as aforesaid, or is entitled to any half-pay or pension or to any compensation granted by the Treasury, the Court, on the application of the trustee, shall from time to time make such order as it thinks just for the payment of the salary, income, half-pay, pension, or compensation, or of any part thereof, to the trustee, to be applied by him in such manner as the Court may direct.

In this enactment "income" means something to

(1) *Williams v. Chambers*, 10 Q. B. 337.

which the bankrupt is legally or equitably entitled, and therefore does not include a voluntary allowance (*m*). It also means something in the nature of a salary, so that money payable to an actor (*n*) under a contract with a theatrical manager, and money payable to a dentist (*o*) under a contract with a partner, is within sect. 53; but the prospective and contingent earnings of a *bone-setter* (*p*) and the wages of a coal miner (*q*) which averaged about twenty-five or thirty shillings a week were held not to be “salary or income” within the meaning of the section.

(*m*) *Ex parte Wicks, Re Wicks*, 17 Ch. D. 70.

(*n*) *Re Shine, Ex parte Shine*, (1892) 1 Q. B. 522.

(*o*) *Re Rogers, Ex parte Collins*, (1894) 1 Q. B. 425.

(*p*) *Ex parte Bencell, Re Hutton*, 14 Q. B. D. 301.

(*q*) *Re Jones, Ex parte Lloyd*, (1891) 2 Q. B. 231.

CHAPTER II.

THE CONTRACT OF HIRING AND SERVICE.

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1. THE REQUISITES OF A CONTRACT OF HIRING AND SERVICE.

WHEN WRITING NECESSARY—THE STATUTE OF FRAUDS.

By common law might be either by deed or parol.

Since the Statute of Frauds writing sometimes is necessary.

By the Common Law a servant might be hired, either by deed or by a parol contract (*a*). But since the year 1677 it has become necessary in many cases that contracts of hiring should be in writing or they cannot be enforced.

The Statute of Frauds (29 Car. 9, c. 3) enacts by sect. 4 that no action shall be brought upon any agreement that is not to be performed within the space of one year from the making thereof unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized. This

(*a*) A contract is called a Parol Contract, when either verbal, or in writing, but not under seal; see *Beckham v. Irake*, 9 M. & W. 79.

enactment does not render illegal or avoid a parol contract which does not comply with the requirements of the section, but only bars the remedy by action by which it might otherwise be enforced (*b*). Though an action cannot be brought upon the contract, it still exists, with the result that no new contract can be implied from acts done in pursuance of it (*c*).

The performance which is mentioned in sect. 4 has been decided to mean a performance by one party to the contract or the other, and therefore where the contract has been, or is capable of being, completely performed on one side, the statute does not apply (*d*).

Where the agreement distinctly shows upon the face of it that the parties contemplated its performance to extend over a greater space of time than one year, the case is within the statute; but where the contract is such that the whole may be performed within a year, and there is no express stipulation to the contrary, the statute does not apply (*e*). The statute means an agreement which appears from its terms to be incapable of performance within the year (*f*).

Therefore a contract for a yearly service which is to commence on a day subsequent to that of the making of the contract for which the employer agrees to pay at the end of each year would be within the statute (*g*).

The following agreements have been held to be within the statute: an agreement for the hire of a carriage for five years determinable at any time within that period

(*b*) *Leroux v. Brown*, 12 C. B. 801; *Britain v. Rossiter*, 11 Q. B. D. 123; *Maddison v. Alderson*, 8 App. Cas. 467.

(*c*) *Snelling v. Lord Huntingfield*, 1 C. M. & R. 20; *Britain v. Rossiter*, 11 Q. B. D. 123. But the facts might afford evidence on which a jury could find that the parties had agreed to dissolve their former contract so that a new contract might be implied, *Cawthorn v. Cordrey*, 32 L. J., C. P. 152.

(*d*) *Donellan v. Reade*, 3 B. & Ad. 899; *Smith v. Neale*, 2 C. B., N. S. 67.

(*e*) *Souch v. Strauchbridge*, 2 C. B. 815; *McGregor v. McGregor*, 21 Q. B. D. 424.

(*f*) *Peter v. Compton*, 1 Smith's L. C. : *Cherry v. Heming*, 4 Ex. 631.

(*g*) *Braccgirdle v. Heald*, 1 B. & Ald. 722; *Giraud v. Richmond*, 2 C. B. 835; *Britain v. Rossiter*, 11 Q. B. D. 123; *Dollar v. Parkinson*, 84 L. T. Rep. 470; but see *Cawthorn v. Cordrey*, 32 L. J., C. P. 152.

upon the payment of a year's hire (*h*) ; an agreement for service to last more than a year defeasible by three months' notice on either side (*i*) ; an agreement for life subject to its being determined by death, or retirement, or misconduct (*j*) ; and an agreement not to set up a certain trade during the joint lives of the parties to it (*k*) ; but it may be doubted how far the last two cases are binding, in view of the decisions previously referred to.

Where the defendant agreed to pay the plaintiff 300*l.* a year quarterly, so long as the plaintiff should maintain and educate the defendant's children, it was held that the agreement was not within the statute ; and in the Exchequer Chamber it was held that, even assuming the contract to be within the statute, yet the plaintiff could sue the defendant for money paid at his request in maintaining and educating the children (*l*).

The consideration, when entire, cannot be split : where, therefore, any part of it is not executed, the statute has been held to apply. Cases, however, may arise, in which there may be two separate promises on separate considerations in one agreement, to one of which the Statute of Frauds may apply, whilst the other is not within that statute. In such cases an action may be brought upon the promise to which the statute does not apply, although not in writing (*m*).

Statute does
not apply to
an implied
hiring :

or a hiring by
deed.

But the statute does not apply where an agreement for a yearly hiring is merely *implied* from circumstances (*n*). And it would seem to be the better opinion, that it does not apply where the agreement is by deed (*o*), as the object of the statute would be satisfied where the

(*h*) *Burch v. Earl of Liverpool*, 9 B. & C. 392 ; and see *Roberts v. Tucker*, 3 Ex. 632.

(*i*) *Dobson v. Collins*, 1 H. & N. 81.

(*j*) *Fley v. Positive Government Life Assurance Co.*, 1 Ex. Div. 29.

(*k*) *Davey v. Shannon*, 4 Ex. Div. 81.

(*l*) *Knouchman v. Bluet*, L. R., 9 Ex. 307.

(*m*) *Green v. Saddington*, 7 E. & B. 503 ; *Cocking v. Ward*, 1 C. B. 858 ; *Hodgson v. Johnson*, 28 L. J., Q. B. 88.

(*n*) *Preston v. Collyer*, 4 Bing. 309.

(*o*) *Cherry v. Heming*, 4 Ex. 631 ; *Coch v. Goodman*, 2 Q. B. 580.

terms of the agreement were reduced into writing and authenticated by a seal or mark.

In a case in which the statute applies, the agreement, "or some memorandum or note thereof," must, in order to support the action founded on it, be in existence at the commencement of the action (*p*).

Memorandum must be in existence when action commenced.

When a memorandum is intended to be worked out by a more formal document, it is not necessary that every stipulation which would be contained in the latter document should be indicated, but the memorandum must contain all the essential terms of the agreement (*q*).

Nature of memorandum.

The memorandum may be in any form, and a note or letter written to a third person (*r*), even the party's own agent (*s*), would be sufficient to satisfy the statute. A letter repudiating the agreement has been held sufficient where it contained all the essential terms of the bargain (*t*). And even a note addressed to the other contracting party, attempting to withdraw from the agreement, may supply the name if not mentioned in the agreement (*u*).

Note to third person.

It matters not from how many different papers the agreement be collected, provided they are connected in sense (*r*), for the writing is merely evidence of the contract which is made before any signature thereof by the parties (*u*). If they refer to one another, they may be connected by parol evidence (*r*).

Agreement may be collected from numerous papers.

The writing must include the names of the parties to the agreement, but it is sufficient although they, or one

Names of the parties.

(*p*) *Bill v. Bament*, 9 M. & W. 36; *Lucas v. Dixon*, 22 Q. B. D. 357.

(*q*) *Gray v. Smith*, 43 Ch. Div. 208.

(*r*) See 12 C. B. 818, 822.

(*s*) *Gibson v. Holland*, L. R., 1 C. P. 1.

(*t*) *Bailey v. Sweeting*, 9 C. B., N. S. 843. See also *Wilkinson v. Evans*, L. R., 1 C. P. 407; *Buxton v. Rust*, L. R., 7 Ex. 279.

(*u*) *Warner v. Willington*, 25 L. J., Ch. 662. See *Reuss v. Picksley*, L. R., 1 Ex. 342.

(*v*) *Boydell v. Drummond*, 11 East, 142; note to *Birkmyr v. Darnell*, 1 Sm. L. C. See *per* Maule, J., in *Woodon v. Woodbridge*, 13 Q. B. 475. See also *Crane v. Powell*, L. R., 4 C. P. 123; *Cave v. Hastings*, 7 Q. B. D. 125; *Long v. Millar*, 4 C. P. D. 450.

(*w*) *Laythorp v. Bryant*, 2 Bing. N. C. 735.

(*x*) *Ridgway v. Wharton*, 6 Ho. Lords Cas. 238; *Pearce v. Gardner*, (1897) 1 Q. B. 688.

of them, may be agents or agent for others, and it makes no difference whether the fact of agency can or cannot be gathered from the writing. Who the principals are may be proved by parol (*y*).

Consideration. The word "agreement" also includes the consideration upon which the agreement of the party to be charged is founded, as well as his promise (*z*).

Lees v. Whitcomb;

Thus, where (*a*) the defendant signed the following agreement, "I hereby agree to remain with L. for two years from the date hereof, for the purpose of learning the business of a dressmaker;" it was held that L. could not maintain an action against the defendant for leaving her service before the expiration of the two years, as the agreement did not show any obligation on L. to teach the defendant, and was, therefore, void for want of mutuality.

Sykes v. Dixon;

And where (*b*) B. signed an agreement to "work for and with S., manufacturer of powder-flasks and other articles, at and in such work as he shall order and direct, and no other person whatsoever, from this day henceforth during and until the expiration of twelve months; and so on from twelve months' end to twelve months' end, until I shall give the said S. twelve months' notice in writing that I shall quit his service:" the agreement was held void for want of mutuality, as S. was not bound to employ B.; and, therefore, it was also held that S. could not maintain an action against the defendant for harbouring B.

Payne v. New South Wales Coal Company.

So, upon similar principles, an agreement by the defendants, that the plaintiffs should have the defendants' shipbroking business at the port of Sydney, upon certain terms, and that the defendants would provide the plaintiffs with a free passage to that colony, was held void, as not

(*y*) *Filby v. Hounsell*, (1896) 2 Ch. 737.

(*z*) *Wain v. Warlters*, 5 East, 10; 1 Smith, L. C.; *Saunders v. Wakefield*, 4 B. & A. 596; and cases cited in 1 Smith's L. C., note to *Birkmyr v. Darnell*.

(*a*) *Lees v. Whitcomb*, 5 Bing. 31; and see *Sweet v. Lee*, 3 M. & G. 452.

(*b*) *Sykes v. Dixon*, 9 A. & E. 693. See *Bealey v. Stuart*, 31 L. J., Exc. 281; *Whittle v. Frankland*, 31 L. J., M. C. 81.

disclosing any consideration, the plaintiffs not being bound to work for the defendants (c).

All the cases, however, agree that it is enough if the consideration can fairly be collected from the terms of the writing (d).

Therefore, where (e) the plaintiffs agreed in writing with L., that he would at all times, during the term of seven years, serve them as a crown-glass maker; that he would not, during the said term, work for any other person at any other glass-house or place of business, without the license of the plaintiffs; that it should be lawful for the plaintiffs to deduct from his wages any fine that he might incur for breach of their rules; that during any depression of trade he should be paid a moiety of his wages; that if he should be sick or lame the plaintiffs should be at liberty to employ any other person in his stead without paying him any wages; that the plaintiffs should pay him when and so long as he should continue to be employed and work as a crown-glass maker, wages by the piece, (stating them,) and 8*l.* per annum in lieu of house-rent and firing; and that the plaintiffs should have the option of dismissing him from their service on giving him a month's wages or a month's notice; it was held that, looking at the agreement altogether, it sufficiently appeared that the plaintiffs were bound to employ L. for the seven years subject to the notice, and that L. was bound to serve them for that period on the same terms; and therefore that the contract was binding on the parties, and might be made the foundation of an action against the defendants for harbouring and employing the plaintiffs' servant.

And so, where (f) P. contracted to serve the plaintiff and his partners, for the time being, for seven years, in

Pilkington v. Scott.

Hartley v. Cummings.

(c) *Payne v. New South Wales Coal, &c. Co.*, 10 Exc. 283.

(d) *Per Wightman, J.*, in *Powers v. Fowler*, 4 E. & B. 518.

(e) *Pilkington v. Scott*, 15 M. & W. 657.

(f) *Hartley v. Cummings*, 5 C. B. 247; and see *Williamson v. Taylor*, 5 Q. B. 175; *R. v. Welch*, 2 E. & B. 357; *Re Bailey*, 3 E. & B. 607.

the business of a glass and alkali manufacturer, and at all times, during the term, to do his best endeavours and use his utmost care and diligence in the works; and further, that he would not at any time during the term neglect or absent himself from the said service without the consent in writing of the plaintiff or his partners for the time being, or either or such of them as should carry on the business, nor would work for or serve any other person without such consent; in consideration of which service the plaintiff agreed to pay P. 24s. per week for a certain amount of work, and to find him some other description of work, provided he should not require that quantity of the specified work, so that P.'s wages should not be less than 24s. per week, except when a furnace should be out, when P. agreed to work for 21s. per week; and it was agreed, that if P. should be sick or incapacitated from performing the service, or in case of misconduct, or if the plaintiff or his partners for the time being, or either or such of them as should carry on the trade, should discontinue the trade during the term—in either of such cases the plaintiff or his partners should be at liberty to retain or employ any other person in the room or stead of P., without being obliged to pay him any wages or satisfaction: it was held, that there was no want of mutuality in the contract, and that the plaintiffs were bound to employ P., and might maintain an action against the defendant for seducing P. from their service and harbouring him after notice.

Courts will not inquire into adequacy of consideration;

If there sufficiently appear to have been a consideration, the Courts will not inquire into the *adequacy* of it, for that were, in truth, to inquire whether the parties have or not made a good bargain, which must be left to the parties themselves to settle (*g*).

but it must not be illegal.

But if the consideration appear to be illegal (*h*), either

(*g*) *Ditchcock v. Colver*, 6 A. & E. 438; *Archer v. Marsh*, 6 A. & E. 959; *Pilkington v. Scott*, 15 M. & W. 657; *Hartley v. Cummings*, 5 C. B. 247; *Saunter v. Ferguson*, 5 C. B. 716.

(*h*) In *Payton v. Bopham*, 9 East, 421, Lord Ellenborough said, "Since the case of *Pole v. Harrobin*, in 1782, it has been generally understood

on the ground of fraud or immorality, or as being contrary to public policy, or the enactments of any statute, the whole agreement will be vitiated, and cannot be made the foundation of any action (*i*).

Thus a contract for service and cohabitation would be void and could not be enforced in a Court of law, and parol evidence would be admissible to show whether the consideration for the hiring was wholly or in part cohabitation (*j*).

Contract for service and cohabitation void.

Where the plaintiff had carried on a business as a medical practitioner, but unlawfully because he had not the necessary statutory qualifications, and the defendant agreed to serve as assistant to him in the business, it was held that the whole agreement was void and no action would lie against the defendant for breach of a clause in the agreement that on the termination of his service he would not carry on a similar business within ten miles of a certain place (*k*).

And where a contract is made on several considerations, any one of which is illegal, the whole contract is void (*l*). If, however, the consideration be good, and the contract be partly good and partly bad, and that part which is good can be separated from that which is bad, the good part may be sustained (*m*). A distinction,

If one of several considerations illegal, the whole contract void.

If consideration good, and contract

that an obligor is not tied up from pleading any matter which shows that the bond was given upon an illegal consideration, whether consistent or not with the condition of the bond." And see *Josephs v. Pehrer*, 3 B. & C. 639; *Cope v. Rowlands*, 2 M. & W. 149; *Greene v. Wroughton*, 11 Exc. 146.

(*i*) Parol evidence to show that the consideration is illegal, if such be the case, is held to be admissible on the grounds of public policy, and not for the sake of the defendant: but because Courts of law will not lend their aid to a plaintiff who seeks to enforce an illegal or immoral contract. See *Collins v. Blantern*, 2 Wils. 341; 1 Smith's L. C.; *Holman v. Johnson*, Cowp. 341; Ch. on Contr. 570; *Abbott v. Hurdicks*, 1 M. & G. 791; *Gas Light and Coke Co. v. Turner*, 6 Bing. N. C. 327.

(*j*) *R. v. Northwingsfield*, 1 B. & Ad. 912. This was a case of settlement, it is true, and not between the parties to the contract; but it illustrates the rule above given. See *Bradshaw v. Hayward*, Carr. & M. 591.

(*k*) *Davies v. Makina*, 29 Ch. D. 596.

(*l*) *Jones v. Waite*, 1 Bing. N. C. 656; 5 Bing. N. C. 341; 9 Cl. & Finn. 101; *Shackell v. Rosier*, 2 Bing. N. C. 634; and see *Hopkins v. Prescott*, 4 C. B. 578; *Nicholls v. Stretton*, 10 Q. B. 346; *Lound v. Grimvade*, 39 Ch. D. 605.

(*m*) Co. Litt. 206 *b*, note; *Wood v. Benson*, 2 Cr. & J. 95; and see *Price v. Green*, 16 M. & W. 346; *Nicholls v. Stretton*, 10 Q. B. 346.

partly good,
good part
may be sup-
ported.

Difference
between
illegality at
common law
and by statute.

Contract of
hiring made
on a Sunday
valid.

Agreement
by public
officer to ac-
cept salary in
lieu of fees.

Other re-
quisites of
the Statute of
Frauds.

Signature,
of party to be
charged suffi-
cient.

however, has been taken as to what is illegal at common law, and what is made illegal by particular statutes; and it has been said that the latter would vitiate the whole instrument, the former only that part which is illegal (*n*). But whether the whole is vitiated or not must depend, in great measure, on the enactments of the particular statute.

A contract of hiring and service for a year, made on a Sunday, between a farmer and a labourer, is valid, notwithstanding the statute 29 Car. 2, c. 7, s. 5, which enacts that no tradesman, artificer, workman, labourer, or any person whatsoever, shall do or exercise any worldly labour, business or work of their ordinary calling on the Lord's-day (*o*).

An agreement between a municipal corporation and the clerk of the peace for the borough on his appointment, whereby he agreed to accept a fixed salary in lieu of fees, and that any surplus should be paid to the borough fund, is illegal as against public policy, the fees being given to enable him to uphold the dignity and perform the duties of his office (*p*).

Where the agreement is one which, by the Statute of Frauds, is required to be in writing, it must also "be signed by the party to be charged therewith, or some other person by him thereunto lawfully authorized."

It is not, however, necessary to prove an agreement signed by *both* parties. It is sufficient if signed by the *party to be charged* (*q*), even if conditional, if accepted by word of mouth by the other party (*r*), but notice of such acceptance must be given (*s*). And this is enough,

(*n*) *Per* Bayley, J., in *Wood v. Benson*, 2 Cr. & J. 95; *Chater v. Beckett*, 7 T. R. 201; *Thomas v. Williams*, 10 B. & C. 661; and see 1 Wms. Saund. 66, note to *Butler v. Wigge*. See *Re Burdett*, 20 Q. B. D. 310.

(*o*) *R. v. Whitnash*, 7 B. & C. 596.

(*p*) *Corporation of Liverpool v. Wright*, Johns. 359; *Mayor, &c. of Dublin v. Hayes*, Ir. Rep. 10, C. L. 226 (1876).

(*q*) *Laythorn v. Bryant*, 2 Bing. N. C. 735; *Hughes v. Budd*, 8 Dowl. 478; and see 3 M. & G. 462, note.

(*r*) *Smith v. Neale*, 26 L. J., C. P. 113; *Powers v. Fowler*, 4 E. & B. 517; *Reuss v. Pickshy*, L. R., 1 Ex. 342.

(*s*) 4 E. & B. 519, note.

although it conclude "As witness our hands" (*t*). Signature by means of a stamp is sufficient (*u*). Mere initials, however, are not sufficient (*v*). Signature at the commencement *may* be good, if inserted in such a manner as to govern, or have the effect of authenticating, the whole instrument (*w*), as "I, A. B., agree" (*x*). But if, in such a case, the agreement conclude "As witness our hands," it should be signed by the party to be charged at the end (*y*). And if not signed at the end, it is a question for the jury, if the party meant to be bound by it (*z*).

A signature to a document which contains the terms of the contract is available for the purpose of satisfying sect. 4, although put *alio intuitu* and not in order to attest or verify the contract, as in the case of the chairman of a joint stock company signing a minute recording the proceedings of the company (*a*).

If the agreement be signed by an agent, it is not necessary, provided that he be lawfully authorized, that his agency should be proved by writing (*b*). Signature by an agent.

The agent need not be expressly authorized to sign a document as a record of the contract. It is enough that he has written something which it was within the scope of his authority to write on behalf of his principal (*c*); and a subsequent adoption of the act of the agent, who has assumed to act as agent, is sufficient (*d*).

(*t*) *Norton v. Powell*, 4 M. & G. 42.

(*u*) *Bennett v. Brumfitt*, L. R., 3 C. P. 28.

(*v*) *Sweet v. Lee*, 3 M. & G. 452.

(*w*) *Caton v. Caton*, L. R., 2 H. L. 127; 36 L. J., Ch. 886.

(*x*) *Knight v. Crockford*, 1 Esp. 190; and see *Lobb v. Stanley*, 5 Q. B. 574 (note commencing with the defendant's name); *Durrell v. Evans*, 1 H. & C. 174; *Murphy v. Boese*, L. R., 10 Ex. 126; *Evans v. Hoare*, (1892) 1 Q. B. 593.

(*y*) *Hubert v. Trcherne*, 3 M. & G. 743.

(*z*) *Johnson v. Dodgson*, 2 M. & W. 653; *Durrell v. Evans*, *ubi supra*. As to the absence of any date, see *Symmons v. Want*, 2 Stark. 371.

(*a*) *Jones v. Victoria Dock Co.*, 2 Q. B. D. 314.

(*b*) *Care v. Mackenzie*, 46 L. J., Ch. 564.

(*c*) *Griffiths Cycle Corporation v. Humber & Co.*, (1899) 2 Q. B. 414.

(*d*) *Maclean v. Dunn*, 4 Bing. 722; *Fitzmaurice v. Bayley*, 6 E. & B. 868.

The signature of an agent acting for both parties is sufficient (*e*).

THE STAMP.

Stamp.

The Stamp Act, 1891 (54 & 55 Vict. c. 39), which imposes a duty upon agreements, contains in the First Schedule exemptions in favour of any—

- “Agreement or memorandum for the hire of any labourer, artificer, manufacturer or menial servant (*f*) ;
- “Agreement or memorandum made between the master and mariners of any ship or vessel for wages on any voyage coastwise from port to port in the United Kingdom.”

Section 25 of the Act imposes a duty of 2s. 6d. on instruments of apprenticeship (*g*) as there defined, but the First Schedule contains the following exemptions :

- (1) “Instrument relating to any poor child apprenticed by, or at the sole charge of, any parish or township, or by or at the sole charge of any public charity, or pursuant to any Act for the regulation of parish apprentices.”
- (2) “Instrument of apprenticeship in Ireland where the value of the premium or consideration does not exceed 10*l*.”

Agreement to be within Stamp Act must be evidence against both parties.

Faughton v. Brine.

In order that an agreement may come within the Stamp Act and require a stamp, it must be such an agreement as would be evidence against *both* the contracting parties ; and, therefore, where (*h*) the defendants, being the provisional committee of an unincorporated association, made and signed a resolution “that E. T.

e *Durrell v. Evans*, 1 H. & C. 171 ; *Abbeduto v. Great Western Railway*, 33 L. J., C. P. 161, 168.

f As to the meaning of “menial servant,” see *Noelton v. Ablett*, 2 Cr. M. & R. 51, and other cases cited *post*.

g By sect. 108 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), indentures of apprenticeship to the sea service are exempt from stamp duty.

h *Faughton v. Brine*, 1 M. & G. 359 ; and see *Beeching v. Westbrook*, 8 M. & W. 411 ; *Knight v. Barber*, 16 M. & W. 66 ; *Tollans v. Fletcher*, 1 Ex. 20 ; *Marshall v. Powell*, 9 Q. B. 779.

be managing director of this association for three years, and John Vaughton (the plaintiff) secretary for the same period; that the remuneration to the former be settled at some future meeting; the latter to receive five pounds per week, and to act under the direction of the provisional committee; " but it did not appear that the plaintiff was present when it was made, or that he was consulted with respect to it, the Court of Common Pleas held that it did not require a stamp, not being either an agreement or a memorandum of agreement. It might have been a proposal or an authority to enter into a contract.

But where the minute of a resolution at a public meeting about a turnpike road, that the plaintiff, who was a surveyor, should be allowed an additional sum for extra trouble he would have, was read over to the plaintiff and assented to by him, it was held to require an agreement stamp (*i*).

*Lucas v.
Beach.*

A mere admission in a letter to a third person that the plaintiff was in the defendant's service does not require a stamp, not being an agreement between the parties (*j*).

*Frazer v.
Bunn.*

The exemptions in the Stamp Act have been held not to apply to an agreement for the hire of a clerk (*k*). "Firemen and stokers" on board a steamer were held (*l*) to come within a similar exemption in the old Stamp Act as labourers and artificers, and not to be mariners under 7 & 8 Vict. c. 112 (*m*), Coleridge, J., saying: "It appears from the contract that they undertake to do the work and discharge the duty of firemen and stokers, and to obey the orders of the engineer. Now it is quite certain if this were the case of a locomotive engine belonging to a railway company, and these persons had agreed to do the same in connection with it, they might well be called labourers if not artificers. So in this case I do not think

Exemptions
in Stamp Act.
Firemen and
stokers on
board a steam-
boat.

*Wilson v.
Zulueta.*

(*i*) *Lucas v. Beach*, 1 M. & G. 417.

(*j*) *Frazer v. Bunn*, 8 C. & P. 704.

(*k*) *Dakin v. Watson*, 2 Cr. & Dix. Cir. Rep. (Irish), 225.

(*l*) *Wilson v. Zulueta*, 14 Q. B. 405; and see *R. v. Wortley*, 2 Den. C. C. 333; *Cornforth v. Danube and Black Sea Railway Co.*, 2 F. & F. 197.

(*m*) Repealed by 17 & 18 Vict. c. 120.

they made themselves ordinary seamen, but that they engaged for the particular duty of doing the work of firemen or stokers, subject to the order of the engineer, and therefore are fairly within the exemption in the Stamp Act."

Overseer in
printing-
office.

And an overseer in a printing-office was also held by Pollock, C. B., at Nisi Prius, to be an "artificer" within the old Stamp Act (*n*).

Mixed con-
tracts.

In cases of mixed contracts, that is, contracts for the hire of labourers, &c., and something else, the question, whether or not the contract is exempt from stamp duty as coming within the above exceptions, must be determined by considering the whole scope and object of the contract. If its primary and main object be the hire of labourers, &c., it would be free from stamp duty, and not the less within the above exception, because it also contained some secondary or collateral stipulations to which the above exception would not apply. But if, on the other hand, the primary and main object of the contract be something clearly not within the above exception, then the mere addition of a secondary or collateral contract of hiring would not bring the case within the exemptions (*o*).

Hughes v.
Budd.

In *Hughes v. Budd* (*p*), the following agreement was held to require a stamp, and for want of one the plaintiff was nonsuited in an action for work and labour: "A memorandum of agreement between Isaac Hughes, quarryman, and the Y. Iron Company, that is, the said Isaac Hughes, quarryman, do engage to quarry a sufficient quantity at Craig Grew, to complete a dry wall which is to be erected from the canal bridge to the Swansea road, which wall is to continue both sides of the new road as above mentioned. The stones are to be of a good and proper quality for the said walling,

(*n*) *Bishop v. Letts*, 1 F. & F. 401.

(*o*) *Smith v. Cutor*, 2 B. & Ald. 778; *Sadler v. Johnson*, 16 M. & W. 775; *Chatfield v. Cox*, 18 Q. B. 321.

(*p*) 8 Dowl. 478; see *Poulton v. Wilson*, 1 F. & F. 403.

at the rate of two shillings per perch, thirty-six cubic feet to the perch." It was contended that it was not necessary that it should be stamped, either because it was an agreement with an artificer for his hire or a memorandum relating to the sale of goods. But Williams, J., was of opinion that it fell between the two, and was something composed of both. "It is not," said he, "to work generally, but to do a particular kind of work. Neither is it for goods sold and delivered, but it is to work on a particular mass of stone."

In deciding whether any particular case comes within the above exemptions in the Stamp Act, some assistance may be derived from the decisions upon the Truck Act, 1831, under which it was held (*q*) that the term "artificer" did not apply to contractors or persons speculating upon the state of the labour-market, but only to those actually and personally engaged or employed to do work. Where the procuring work to be done by the hands of others comprehended the whole of what a man contracted for, the circumstance of his doing some portion of the work himself was held not to bring him within the definition of "artificer" in that statute. There must be a contract by which he *binds himself* to do it. On the other hand, the Truck Act, 1831, was held to apply to cases in which by the contract the personal labour of the artificer was to be given, although he might be at liberty also to procure the labour of others (*r*).

Decisions on
Truck Act.

In prosecutions for embezzlement and other *criminal* proceedings, no objection can be taken on account of an agreement or other document being unstamped (*s*).

Criminal
proceedings.

An agreement whereby one party agreed to pay the other a fixed salary, and the other agreed not to set up a chemist's shop within a certain distance, and the parties

Mounsey v.
Stephenson.

(*q*) See sect. 25 of the Truck Act, 1831, *post*, in the Appendix, and the cases there cited.

(*r*) *Weaver v. Floyd*, 21 L. J., Q. B. 151; *Bowers v. Lorkein*, 6 E. & B. 584; *Lawrence v. Todd*, 32 L. J., M. C. 238; *Whiteley v. Armitage*, 13 W. R. 144; *Pillar v. Llynri Coal and Iron Co.*, L. R., 4 C. P. 752.

(*s*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 14.

were mutually bound in a penalty of 600*l.* to perform the agreement, has been held to be sufficiently stamped with a common deed-stamp of 1*l.* 15*s.* (*t*).

Messman to
a regiment.

Whether or not an agreement by the officers of a regiment with their messman requires a stamp must depend in great measure on the wording of it, but it would be prudent in all cases to have such an agreement stamped with an ordinary agreement-stamp of 6*d.*, as most probably it would not come within the exemption. In many cases he is more of a contractor than a servant (*u*).

2. INTERPRETATION OF THE CONTRACT.

ADMISSIBILITY OF PAROL EVIDENCE.

When parol
evidence ad-
missible.

Parol evidence is admissible to show that an agreement was not intended to operate unless a particular event should happen (*v*).

To apply
written con-
tract.

Mumford v.
Girthing.

Parol evidence is also admissible to show the circumstances under which an agreement was made, and to apply the words used to those circumstances, as in the following case (*w*): The plaintiffs, lace merchants in London, employed six travellers for different districts, and the defendant was in their employ as assistant to one of those travellers. A vacancy having occurred in the M. district, the defendant in March, 1858, was engaged verbally by the plaintiffs to travel as head traveller for that district at a salary of 50*l.* per annum, and 8*l.* 15*s.* per week for expenses, it being at the time arranged between them that the terms of the agreement should be reduced to writing. After the defendant had started on the journey and been absent three or four weeks, a list of towns and customers was sent to him,

(*t*) *Mounsey v. Stephenson*, 7 B. & C. 403.

(*u*) See *Churchward v. Chambers*, 2 F. & F. 229.

(*v*) *Pym v. Campbell*, 6 E. & B. 370; *Davis v. Jones*, 17 C. B. 625; *Wallis v. Littell*, 31 L. J., C. P. 100; *Lindley v. Lacey*, 34 L. J., C. P. 7; *Little v. Hornbrook*, (1897) 1 Ch. 25.

(*w*) *Mumford v. Girthing*, 29 L. J., C. P. 105.

and the following agreement, which he signed and returned: "April 30, 1858. To H. & W. Mumford. In consideration of my entering upon your employ at a salary to commence with at 50*l.* a year, I herewith agree to do so, with the understanding that in the event of my wishing to travel, and doing so, for any other house in the same trade on any part of the same ground to pay you the sum of 50*l.* (Signed) W. Getling." *Mumford v. Getling.*

The defendant continued in the plaintiffs' employ till the early part of 1859, when he left them and travelled over the same district for a rival house in the same trade, upon which the plaintiffs brought an action against him for the 50*l.* At the trial, amongst other things, it was objected that parol evidence was inadmissible to show that the agreement was to travel the M. district; but it was admitted, and the plaintiffs had a verdict for the 50*l.* Upon a subsequent application to the Court to enter a nonsuit, the rule was discharged, and Erle, C. J., said:

"I am clearly of opinion that the parol evidence which was objected to was admissible for the purpose of ascertaining the subject-matter to which to apply the contract. It was not tendered or admitted for the purpose of varying the contract itself, or of varying the sense of the words used, but for the purpose of showing what the circumstances were under which such wide words were used, and of applying those wide words to the circumstances. The agreement says, 'in consideration of my entering upon your employ.' Those words are very wide, and might include any possible employment, menial or otherwise, which one man could undertake for another: but it is not likely that the parties meant that. Then parol evidence was admissible to show in what sense those words were used, and being admitted it showed that the parties meant that the defendant was to enter into the employ of the plaintiffs as traveller in their trade on the M. journey. The written contract was drawn up with reference to a previous conversation and proposal, and the parol evidence applies the written words in accordance with that previous proposal. This view entirely agrees with that taken by the Court of Queen's Bench in the case of *McDonald v. Longbottom* (x), which was, if I may so speak of a decision to which I was myself a party, a perfectly sound decision. The written contract there described the article purchased as 'your wool,' and parol evidence was admitted of a previous conversation between the parties to the effect that the wool about which they were contracting consisted partly of the plaintiff's own clip and partly of wool purchased from other persons. The parol evidence

(x) 28 L. J., Q. B. 293.

was admitted to identify the subject-matter of the contract, the words 'your wool' being wide and indefinite, as are the words 'your employ' in the contract which we are now considering."

Parol evidence not admissible to vary written contract.

Every part of a written contract essential.

Giraud v. Richmond.

Parol evidence admissible to annex incidents,

e.g., Custom.

But where the agreement is such that it is required by the Statute of Frauds to be in writing, parol evidence is not admissible to show *verbal alterations* of it, for that would be a direct violation of the statute (*y*). And the law is the same where the agreement is reduced to writing, whether it be such an agreement as calls for a memorandum or not (*z*). Moreover, "it seems to be unnecessary to inquire what are the *essential* parts of the contract and what not, and that *every* part of the contract, in regard to which the parties are stipulating, must be taken to be material" (*a*). Thus, where (*b*) a written agreement of hiring and service contained stipulations for *yearly* payments, evidence that a verbal agreement for *quarterly* payments had been made, was rejected, and the fact of quarterly payments having been made, was held not to vary the rights of the parties.

But although, where parties agree that a particular instrument shall contain the terms of the contract, parol evidence cannot be given to add to or diminish those terms (*c*), yet it may be given to *annex incidents*, as it is termed (*d*).

Therefore, in all contracts of hiring and service, which do not, either expressly or by necessary implication from the terms used, exclude the custom of the particular trade, business or occupation, with reference to which the contract is made, parol evidence is admissible to

(*y*) *Guss v. Lord Nagent*, 5 B. & Ad. 58; *Stowell v. Robinson*, 3 Bing. N. C. 928; *Stead v. Dauber*, 10 A. & E. 57.

(*z*) *Countess of Rutland's case*, 5 Rep. 25; and see *Lockett v. Nicklin*, 2 Exc. 93, 97. But this would not apply to a memorandum made by a third party of the terms of the hiring, so as to exclude parol evidence of those terms, *R. v. Wrangle*, 2 A. & E. 514.

(*a*) Per Parke, B., in *Marshall v. Lynn*, 6 M. & W. 109, 117.

(*b*) *Giraud v. Richmond*, 2 C. B. 835.

(*c*) *Evans v. Roe*, L. R., 7 C. P. 138, where conversation at time of hiring was held to be excluded, as there was a contract in writing.

(*d*) *Hutton v. Warren*, 1 M. & W. 475; see the cases collected in the note to *Wigglesworth v. Dallison*, 1 Smith's L. C.; and *Metzner v. Bolton*, 9 Exc. 518.

show that by the custom of the trade, &c., the contract is liable to be put an end to by notice. The custom with reference to notice of course varies in different trades and occupations (*e*). Where (*f*) the plaintiff entered into the defendant's service, under a written agreement that he was to have "6s. a week, three bolls of wheat, to set potatoes for his family's use, to have a cow kept, house and firing and to keep himself a pig, no poultry to be kept, his wife to keep the museum clean, he was to keep the gardens and pleasure-grounds in clean and good order, to assist in the stables, and, when required, at hay and corn harvest, and to make himself generally useful; to enter 12th May, 1838;" evidence was admitted to show that the plaintiff was by custom only entitled to a month's warning.

Custom with regard to notice.

Johnson v. Blenkinsopp.

Again, in (*g*) an action for wrongfully dismissing the editor of a newspaper, who had been engaged by letter, evidence was admitted to prove a custom that editors, sub-editors and reporters of newspapers were always engaged for a year, unless it were otherwise expressed at the time of making an engagement.

Holcroft v. Barber.

And where the parties signed a "memorandum of agreement between I. and Co., of Leeds, of the first part, and P., of London, of the second part. The aforesaid P. engages to serve the said I. and Co., as agent or representative, at the salary of 150*l.* per annum in consideration thereof. Also, provided, at the end of the year, the said I. and Co. find the said P. has done sufficient business to justify them in recompensing, by making up his salary to 180*l.*, to do so, being a donation of 30*l.* to his present stipulated amount of 150*l.*:" it was held that the terms of the agreement did not exclude a general

Parker v. Ibbetson.

(*e*) See *Moult v. Halliday*, (1898) 1 Q. B. 125, and other cases cited, *post*.

(*f*) *Johnson v. Blenkinsopp*, 5 Jur. 870.

(*g*) *Holcroft v. Barber*, 1 C. & K. 4; and see *Baxter v. Nurse*, 1 C. & K. 13, where Tindal, C. J., in summing up to the jury, said, "There is no doubt that where there is a general understanding and a course of dealing, and agreements are made without any specific stipulations to vary them from such general course of dealing, they are included in it."

custom in the trade (defendants were woollen merchants), that either party might determine the service upon giving to the other a month's notice. And, also, that the question, whether or not the custom was excluded, was one for the Court and not for the jury, though it was for the jury to find the existence or non-existence of the custom alleged. It was also held, that the 30*l.* to be given at the end of the year was a mere gratuity, for which no action would lie, and did not operate in any way to exclude the custom (*h*).

Parol evidence
admissible to
explain am-
biguous
terms;

Upon similar principles, parol evidence is also held to be admissible to explain the meaning of terms used, where an ambiguity is raised by evidence as to the meaning of those terms (*i*).

Grant v.
Maddox;

Thus, where (*j*), by a written contract, the plaintiff agreed to perform at the defendant's theatre, and the defendant engaged her for three years, and engaged to pay her a salary of 5*l.*, 6*l.*, and 7*l.* per week in those years, parol evidence was admitted to show that, according to the understanding and custom of the theatrical profession, under an engagement to perform for one or more years, actors were only paid during the theatrical season.

not to con-
tradict them;

But where a horse-trainer, by articles of apprenticeship, which were in a common form, agreed to find an apprentice sufficient meat, drink, wages, "lodging and all other necessaries" during the apprenticeship, it was held that evidence of a custom in the trade that a master should charge the apprentice and deduct from his wages the cost of "clothes and washing" was inadmissible as being inconsistent with the terms of the contract, those

(*h*) *Parker v. Ibbotson*, 27 L. J., Q. B. 236. As to the 30*l.*, see *Lake v. Campbell*, 5 L. T., N. S. 582, *post*, where a promised "gift" of 20*l.* was held not to be a gratuity.

(*i*) *Sotilichas v. Kemp*, 3 Exc. 105; *Smith v. Thompson*, 8 C. B. 41, 59.

(*j*) *Grant v. Maddox*, 15 M. & W. 737. See *Myers v. Sayl*, 30 L. J., Q. B. 9. See also *Smith v. Thompson*, 8 C. B. 41, where it was held to have been properly left to a jury to say whether the plaintiff, a clerk, had been guilty of a misappropriation of money intrusted to him by the defendant, his master, "for business purposes," in having applied part of it to the payment of his own salary.

things being included in the term necessities which the master was to “find” gratis. And the master was not allowed to deduct their cost from the wages due to the apprentice (*k*).

And it would seem that parol evidence is not admissible to contradict or vary implied, any more than express, incidents (*l*).

not to vary implied incidents.

THE RELATIONSHIP CREATED BY THE CONTRACT.—PARTNER OR SERVANT.

Arrangements are frequently made between masters in trade and brokers, clerks, travellers and other agents and servants employed by them, under which such persons, in lieu of receiving a fixed salary, are remunerated by a portion of the sums received by them on account of their master, or by a percentage on their earnings, or by a sum calculated with reference to the gross or net profits of their master or principal, or some part of such profits, or in some similar method. These various modes of payment, which are generally adopted with a view to secure or increase exertion, often give rise to a question how far the persons whose services are to be so remunerated are to be regarded as partners, and not mere servants or agents in the business.

How far arrangements for remunerating servant by portion of, or percentage on, profits, &c., make him a partner.

The Partnership Act, 1890 (53 & 54 Vict. c. 39), contains an enactment of the law as laid down by the House of Lords (*m*), and in subsequent cases by which numerous decisions referred to in previous editions of this book have been overruled or become obsolete.

Section 1 of that Act defines partnership as “the relation which subsists between persons carrying on a business in common with a view to profit,” and by sect. 2 certain rules are laid down to which regard is to be

(*k*) *Abbott v. Bates*, 45 L. J., C. L. 117.

(*l*) *Per Blackburn, J.*, in *Burgess v. Wickham*, 33 L. J., Q. B. 17, 23.

(*m*) *Cox v. Hickman*, 8 H. L. C. 268.

had in determining whether a partnership does or does not exist. One of these rules is as follows :

The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but the receipt of such a share or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business ; and in particular . . . (b) A contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such. . . . (d) The advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business, or liable as such. Provided that the contract is in writing, and signed by or on behalf of all the parties thereto.

A question of the intention of the parties as expressed by their whole contract.

Where, therefore, a question arises between the parties to an agreement, the mere fact that one of them is to receive a portion of the profits of the business will not be conclusive that he is a partner in the business. Like every other agreement, the whole of it must be looked at in order to ascertain its meaning. The question is one of the intention of the parties as shown by the whole contract (*n*). The receipt by a person of a share of the profits of a business is, when taken by itself, evidence that he is a partner in it, and if it is the only piece of evidence before the Court, it is evidence on which the Court must act. But it is evidence which is capable of being rebutted by other circumstances, and if there are any other circumstances to be considered, they ought to be all fairly considered together. The whole scope of the agreement and all its terms ought to be looked at before any presumption of intention can properly be made at all (*o*).

The use of the word "salary" in the agreement, which implies payment to a servant, and which is a

(n) *Walker v. Hirsch*, 27 Ch. Div. 461.

(o) *Badeley v. Consolidated Bank*, 38 Ch. Div. 238 ; *Davis v. Davis*, (1894) 1 Ch. 393.

word not generally applicable to partners *inter se*, is some evidence that the person who is to receive it was intended by the parties to the agreement to be a servant, and not a partner, of the person carrying on the business (*p*).

An agreement by which a person was to receive a fixed salary and one-eighth of the profits of a business, and was also to pay one-eighth of the losses, was held not to make him a partner, taking into consideration the other terms of the contract (*q*).

A partner, if he has all the rights incident to that position, would have a right to take a share in the control of the partnership business, but a servant would have no such right, unless under some special contract. And a person having the right of control is not necessarily therefore a partner.

Where, by a written agreement between Y. and J., it was arranged that J. should have certain large powers of control over Y.'s business, and should take charge of the office work and keep the books and accounts of the business, and manage and control the financial arrangements and affairs thereof, and should be entitled to draw and be paid out of the profits of the business for such services the sum of 3*l.* per week, it was held that the presence of the clauses giving large powers of control did not compel the Court to hold that a partnership was intended between the parties, and that therefore J. was not Y.'s partner, and that the contract that J. should receive the weekly payment "out of the profits" was equivalent to a contract that he should receive a "share of the profits" within the meaning of the enactment above set out (*r*).

Where the question arises not between the parties themselves but between one of them and a third person, a distinction of some nicety and difficulty of application

As regard third persons.

(*p*) *Ross v. Parkyn*, 20 Eq. 331.

(*q*) *Walker v. Hirsch*, 27 Ch. Div. 461.

(*r*) *Re Young, Ex parte Jones*, (1896) 2 Q. B. 484.

to the circumstances of particular cases was formerly held to exist between cases in which the agreement was that the servant should be remunerated by a portion of the net profits of a business and cases in which the remuneration depended on the gross earnings. In the former case a servant was considered to be a partner so far as to be liable to third persons as such; while in the latter case he was not considered as a partner even with regard to third persons. The drawing of this distinction was often strongly animadverted upon, and since the decision of the House of Lords in *Cox v. Hickman* (s) the supposed rules as to the difference between gross and net profits, so far as they afford a conclusive test of liability, have ceased to exist (t).

The Partnership Act, 1890 (53 & 54 Vict. c. 39), contains the following provisions as to persons liable by "holding out":

Sect. 14 (1). Every one who by words spoken or written or by conduct represents himself, or who knowingly suffers himself to be represented, as a partner in a particular firm, is liable as a partner to any one who has on the faith of any such representation given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made.

Servant's right
to an account.

Where, under a contract of hiring and service, a salary is to be paid in proportion to the profits, the servant has a right to claim an account (u), and has therefore a right to overhaul the partnership books (v), unless by agreement he has deprived himself of that right (w).

APPRENTICE OR SERVANT.

Whether the
contract is one
of apprenticeship,
or of

Another question, which was formerly of more importance than it is at the present day, though even now

(s) *Cox v. Hickman*, 8 H. L. C. 268.

(t) See Lindley on Partnership.

(u) *Harvington v. Churchward*, 29 L. J., Ch. 521.

(v) *Rushton v. Grissell*, 5 Eq. 326.

(w) *Turney v. Bayley*, 4 D. J. & Sm. 332.

it may often arise, is whether the agreement into which the parties have entered was intended to create the relationship of master and apprentice, or master and servant (*x*). In deciding this point more attention is now paid to the main object of the parties than to the language used by them (*y*). Formerly it was held that unless the word "apprentice" was used, the contract might be considered one of hiring and service (*z*). But the cases in which that doctrine was laid down and upheld have long been over-ruled (*a*), and each case is now held to depend upon its own particular circumstances (*b*). If the parties appear to have contemplated the relation of master and apprentice, then the contract must be considered as one of apprenticeship (*c*), and if it be an imperfect apprenticeship it cannot be treated as a contract of hiring and service. If, on the other hand, it appear that the parties contemplated the relation of master and servant, then it must be deemed a contract of hiring and service (*d*). Where teaching and learning appear to be the primary object of the parties, then, although work is to be done for the master, the contract is to be considered as one of apprenticeship. But if working for the master appear to be the primary object, and teaching and learning the master's trade a mere secondary consideration, the existence of a stipulation by the master to teach, and a corresponding stipulation by the servant to learn, the master's trade, will not alone prevent the contract from being considered one of hiring

hiring and
service,

depends on
the intention
of the parties.

(*x*) As to the difference between an apprentice and a servant with regard to discharge for misconduct, see *post*, Discharge of Servant.

(*y*) *R. v. Nether Knutsford*, 1 B. & Ad. 730.

(*z*) *R. v. Little Bolton*, 2 Bott, 316; *R. v. Eccleston*, 2 East, 298.

(*a*) *R. v. Rainham*, 1 East, 531; *R. v. Laindon*, 8 T. R. 379; *R. v. Crediton*, 2 B. & Ad. 493; *R. v. Great Wishford*, 4 A. & E. 216, 223.

(*b*) *R. v. King's Lynn*, 6 B. & C. 99; *R. v. Edingale*, 10 B. & C. 739; *R. v. Northowram*, 9 Q. B. 24.

(*c*) *R. v. Bilborough*, 1 B. & Ald. 115; *R. v. Crediton*, 2 B. & Ad. 493; *R. v. Newton*, 1 A. & E. 238; *R. v. Great Wishford*, 4 A. & E. 216; *R. v. Ightham*, 4 A. & E. 937; *R. v. Northowram*, 9 Q. B. 24.

(*d*) *Per Bayley, J.*, in *R. v. King's Lynn*, 6 B. & C. 99; see *R. v. Great Wishford*, 4 A. & E. 222, and *R. v. Northowram*, 9 Q. B. 24.

and service (*e*). And if a man is in fact a mere workman, and not bound by apprenticeship indenture, his being called an apprentice by the usage of trade and receiving less wages for seven years than ordinary workmen, will not make him an apprentice, so as to exempt him from the operation of statutes merely applicable to workmen (*f*).

TENANT OR SERVANT.

Tenant or
servant.

Where the occupation of a house by a servant is necessary for the performance of his services, and he is required to reside in the house in order to perform those services, the occupation being strictly ancillary to the performance of the duties which he has to perform, his occupation is that of a servant. But where a servant is permitted to reside in a house of his employer, the fact that his occupation of the house is in part remuneration for his services does not prevent his occupation being that of a tenant (*g*). The question whether a servant occupies a house as a servant or as a tenant depends in each case on the terms of his agreement with his master. So where a servant occupies premises belonging to his master, as where a coachman occupies rooms over a stable, or a gardener an outhouse, or a gatekeeper a lodge in the park, or a porter a lodge at the park gate, his occupation is in law the occupation of his master (*h*). So, too, labourers living in cottages on the farms of their employer who were permitted but not required to live there on the terms that they were to give up possession when their employment ceased, and were either charged a reduced rent or had the rent deducted from

Servant
occupying
premises be-
longing to
his master
does not
occupy as
tenant,

(*e*) *R. v. Crediton*, 2 B. & Ad. 497; *R. v. Billingham*, 5 A. & E. 676; *R. v. Northorham*, 9 Q. B. 24.

(*f*) *Hamilton v. Outram*, 17 Fras. M. & McP. 798.

(*g*) *Hughes v. Chatham Overseers*, 5 M. & G. 54; *Dobson v. Jones*, 5 M. & G. 112; *Smith v. Seghill*, L. R., 10 Q. B. 422.

(*h*) *Becke v. Beaumont*, 16 East, 31; *R. v. Stock*, 2 Taunt. 329; *R. v. Rees*, 7 C. & P. 568; *R. v. Ashley*, 1 C. & K. 198; *St. Anne v. Linnecan Society*, 3 E. & B. 793; and see *Cases of Burglary*, 1 Russ. on Cr. See also *Wright v. Stewart*, 29 L. J., Q. B. 161.

their wages, were held not to occupy as servants but as tenants (*i*). And such servants, when dismissed from the service, have no right to continue in the occupation of their houses as tenants, nor are they entitled to notice to quit (*j*). Nor are they entitled *de jure* to a reasonable time allowed them for the removal of their furniture, &c. But if they go on simply for that purpose, and do not remain an unreasonable time, or exclude their master, they could perhaps not be treated as trespassers (*k*). So, under the law of settlement, the occupation of a tenement connected with and ancillary to the service, would not confer a settlement, though it would if wholly unconnected therewith (*l*). And a Wesleyan minister in the occupation of a house rented by the circuit stewards, did not thereby gain a settlement by renting a tenement, he being in the position of servant to the circuit stewards (*m*). So a servant at an annual salary, who resided in two rooms within the walls of a lighthouse to take care of the light, was held not liable to be rated as occupier, his occupation being that of his master (*n*). But a servant was held liable to poor rate who took a house not belonging to his master, although his master paid the rent (*o*).

nor is he
liable to poor
rates,

Upon similar principles, it has been held that a servant

nor qualified
to be overseer.

(*i*) *Marsh v. Estcourt*, 24 Q. B. D. 147.

(*j*) *Mayhew v. Suttle*, 4 E. & B. 347, and *White v. Bailey*, 30 L. J., C. P. 253, *post*. As to the right of a master to turn out his servant by force, see *Donaldson v. Williams*, 1 Cr. & M. 345. In an action brought by the servant against the master, the defendant may obtain an interlocutory injunction to restrain him from remaining on the premises, or a mandatory injunction ordering him to go, *Collison v. Warren*, (1901) 1 Ch. 812.

(*k*) *Doe v. M'Kaeq*, 10 B. & C. 721. See as to turning a servant's goods out of a house occupied by him as servant, *Lake v. Campbell*, 5 L. T., N. S. 582. As to recovering possession of small tenements, see 1 & 2 Vict. c. 74; of school houses, &c., 23 & 24 Vict. c. 136, ss. 13, 14.

(*l*) *R. v. Seacroft*, 2 M. & S. 472; *R. v. Minster*, 3 M. & S. 276; *R. v. Chesnut*, 1 B. & Ald. 473; *R. v. Iken*, 2 A. & E. 147; *R. v. Terrott*, 3 East, 506; *R. v. Ponsonby*, 3 Q. B. 14; and *cas. cit.* Archbold's Poor Law.

(*m*) *R. v. Tiverton*, 30 L. J., M. C. 79. The interest of such an occupant is determinable by a demand of possession, *Doe v. Jones*, 10 B. & C. 718; *Perry v. Shipway*, 28 L. J., Ch. 660.

(*n*) *R. v. Tynemouth*, 12 East, 46; *R. v. Field*, 5 T. R. 587; *R. v. Shepherd*, 1 Q. B. 170.

(*o*) *R. v. Lynn*, 8 A. & E. 379; *R. v. Bishopton*, 9 A. & E. 824.

who occupies a tenement of his master in part payment of his services, and as subservient to, and necessary for, the performance thereof, and not merely as matter of convenience, is not a "substantial householder" within 43 Eliz. c. 2, s. 1, so as to be appointed overseer (*p*).

Mayhew v. Suttle.

Brewer's
servant in
beershop not
a tenant.

Where S., a brewer, by an agreement, reciting that he was in possession of a messuage and premises whereon the sale of beer and porter had been for some time last past and then was carried on and conducted by U. for and on S.'s account, agreed that M. might from the date of the agreement enter into and upon the said premises, and carry on and conduct thereon such trade or business for S. in the place and stead, in the same manner, and with and upon the same privileges and terms as U. had theretofore done, until the agreement should be determined and put an end to by one month's notice on either side; and the agreement also contained stipulations that M. should take all his beer from S., and not part with the trade or premises without S.'s consent, and on receiving notice to put an end to the agreement should quietly give up possession of the premises, trade fixtures, &c., without requiring any payment from S.: it was held both by the Queen's Bench and Exchequer Chamber to be abundantly clear that there was no relation between the parties but that of master and servant, and that M. could not maintain trespass against S. for entering without a month's notice, as he had no such possession as would enable him to maintain such action (*q*).

White v. Bailey.

Manager of
a society
allowed to
occupy shop
not tenant.

The plaintiff was manager and agent of the Swedenborg Society, and the defendants were six of the committee of the society, which was established for the purpose of printing and publishing the works of Emanuel Swedenborg. The society having resolved to purchase a house and establish a library and reading-room for the use of

(*p*) *R. v. Sparvell*, L. R., 1 Q. B. 72. See the converse case, *R. v. Hall*, 1 B. & C. 123.

(*q*) *Mayhew v. Suttle*, 4 E. & B. 347.

members, and a shop at which their publications might be stored, published and sold, advertised for a librarian and storekeeper; and the committee, who were the governing body of the society, on 6th July, 1854, resolved, "That the person to be appointed should have premises, rent and tax free, in a good situation. That 35 per cent. should be allowed to the storekeeper on all books sold out of shop, but not on donations or half-subscriptions; he making such arrangements with booksellers, agents of the society, as the committee should from time to time determine. To carry on a retail business in other new church works and general literature for his own benefit. The committee to guarantee 150*l.* for the first year." The plaintiff offered himself for the situation; and, at a meeting of the committee held on 13th July, 1854, it was resolved, "That Mr. White, of Glasgow, be elected the storekeeper and agent, on the general terms mentioned in the resolution passed at the preceding meeting of the 6th, with such modifications as may be mutually agreed upon, and that he be requested to meet the committee as early as possible to arrange the final terms, and to assist in looking for a proper house." The plaintiff was accordingly appointed, and re-appointed from year to year, with slight variations. The minute of his re-appointment in 1857 was in these terms:—"That Mr. White be manager for the ensuing year, at a salary of 75*l.* a year, and six months' notice of separation on either side." In 1855 the society purchased a house which was assigned to trustees for them. On taking possession, the ground floor was used as a shop or warehouse, the first floor as a library and reading-room, and the upper rooms were occupied by the plaintiff, by permission of the society. Above the door of the shop there was painted in large letters, "Swedenborg Society," and on the posts, "William White, bookseller and publisher." The plaintiff occupied the premises, and carried on his business there. Disputes arose among the members of the society, in which the plaintiff was involved. Resolutions were passed

*White v.
Bailey.*

*White v.
Bailey.*

and rescinded; and finally, at a meeting of the committee, at which the plaintiff was present, it was resolved, "That Mr. White be now dismissed, and that he be required forthwith to quit the society's house in B. Street, and to remove his own stock and property." Thereupon formal notice in writing was given to the plaintiff of such dismissal and to quit the premises, and possession was taken and kept till 26th November, when the plaintiff forcibly re-entered. Proceedings were then taken against him in Chancery, and an injunction obtained, under which he was obliged to give up possession; and he then brought an action of trespass for the taking and retaining possession previous to 26th November. But he was nonsuited, as he was a servant only, and his occupation was the possession of the society, and the nonsuit was afterwards upheld by the Court; Erle, C. J., observing, "The distinction is extremely important between granting an estate to a person and the case where the owner of the premises places him in the premises for the purpose of enabling him to perform the duty which he is employed to do. In the latter case he has no estate" (r).

Servant cannot dispute master's title.

A servant who has been put into possession of a house or other premises by his master cannot of course dispute his master's title, nor that of his master's devisee(s). If he wish to do so he must first give up possession (t).

Government servants permitted to occupy houses as part of salary entitled to vote; but not if required to do so.

Officers and servants of government who are permitted to occupy houses belonging to government as part remuneration for their services may be considered as occupying as tenants within the Reform Act, 2 Will. 4, c. 45, s. 27, but not if they are required to occupy them with a view to the more efficient performance of their duties (u).

(r) *White v. Bailey*, 30 L. J., C. P. 253.

(s) *Doe v. Birchmore*, 9 A. & E. 662. This rule does not merely apply to ejectment, *DeLaury v. Fox*, 2 C. B., N. S. 768.

(t) *Doe v. Baytop*, 3 A. & E. 188; *Doe v. Birchmore*, *ubi supra*.

(u) *Hughes v. Chatham*, 5 M. & G. 54; *Dobson v. Jones*, *ibid*, 112; *Bridgewater v. Durant*, 31 L. J., C. P. 46.

But a hall-keeper to the guildhall of a borough who occupied a house (communicating with a yard at the back of the guildhall) which was originally built as a residence for and was always occupied by the hall-keeper for the time being, who was elected annually, and had the exclusive control of the house, and paid rates and taxes, but no rent, his occupation being considered as part payment for his services, and being necessary for the due discharge of his duties, was held to occupy as servant and not as tenant, and therefore not entitled to a vote (*r*).

Hall-keeper to guildhall of a borough not entitled to vote;

And it has been held that one of the six preachers of Canterbury Cathedral, who had a stipend of 32*l.* a year, in lieu of 20*l.* a year and a house, and held his office during good behaviour, was not entitled to a county vote, he being merely in the position of a servant (*w*).

nor preacher of Canterbury Cathedral.

GENERAL HIRING, YEARLY HIRING, ETC.

Where no time is limited either expressly or by implication for the duration of a contract of hiring and service, the hiring is considered as a general hiring, and in point of law a hiring for a year (*x*). This rule is applicable to all contracts of hiring and service, whether written (*y*) or unwritten, whether express or implied, and whatever be the nature of the service; and is not confined to servants in husbandry, but extends also to domestic (*z*) and other servants, such as clerks and others (*a*). But it is not an inflexible rule, and does not apply where the contract contains stipulations inconsistent with the application of it, or where from some well-known custom upon the

A general hiring is a hiring for a year.

(*r*) *Clark v. Bury St. Edmunds*, 1 C. B., N. S. 23.

(*w*) *Hall v. Lewis*, 31 L. J., M. C. 45. But now under section 3 of the Representation of the People Act, 1884, a service franchise has been created by which a man inhabiting a dwelling-house by virtue of any office, service, or employment, may for parliamentary purposes be deemed to occupy as tenant.

(*x*) Co. Litt. 42 b; *Fawcett v. Cash*, 5 B. & Ad. 904; *Lilley v. Elwin*, 11 Q. B. 742. There is scarcely a case upon the subject of settlement by hiring and service in which this rule is not admitted; and it is never denied in any one of them.

(*y*) *Elderton v. Emmens*, 6 C. B. 175; 13 C. B. 495.

(*z*) See *R. v. Worfield*, 5 T. R. 506.

(*a*) *Huttman v. Boulnois*, 2 C. & P. 511.

subject the parties may be considered to have contracted with reference to such custom, and thus to have excluded its application (*b*). And as we shall presently see, a yearly hiring may in general be terminated by giving the customary notice.

But the rule only applies where there has been a contract of hiring, either express or implied.

Boyley v. Rimmell.

Nor does the rule apply to cases in which there has been a service, but *no contract* of hiring, and no circumstances from which a contract can be implied (*c*). And therefore where (*d*) an assistant-surgeon brought an action against his employer for the amount of salary due to him, and no specific contract of hiring was proved, but evidence was given of the service, and it appeared that after the plaintiff had been some time in the defendant's service he was taken ill and went to the hospital, and never returned nor was asked to return to his employment, and that he had been paid different sums of money, but not at any fixed or definite periods: although it was contended on the part of the defendant that the evidence showed a yearly hiring, and therefore that the plaintiff, having left his situation before the end of the year, could not recover any part of his salary, yet it was held that there was no evidence to show a hiring for a year, and the plaintiff recovered for the time he had actually served.

When contract cannot be implied.

And a contract of hiring cannot be presumed where the circumstances tend rather to rebut such a presumption, as where paupers have been taken to live with their relatives or others out of charity (*e*), or where the agreement was for cohabitation and not merely for service (*f*).

Where service performed contract presumed.

But where there has been *a service* for more than a year, and wages paid without any express contract of

(*b*) *Beuter v. Nurse*, 6 M. & G. 935.

(*c*) As there were in *Boston v. Collyer*, 4 Bing. 309.

(*d*) *Boyley v. Rimmell*, 1 M. & W. 506; and see *Broxham v. Wiggstaffe*, 5 Jurist, 845.

(*e*) *R. v. Pitminster*, 2 Bott, 269; *R. v. Weyhall*, 2 Bott, 271; Barr. S. C. 191; 1 W. Bl. 206; *R. v. Stokesley*, 6 T. R. 757. *R. v. Rickingham*, 7 East, 373; *R. v. Sou*, 1 B. & Ald. 178.

(*f*) *R. v. Northwinghamfield*, 1 B. & Ad. 912; *Bradshaw v. Hayward*, Carr. & M. 591.

hiring, it may be presumed that such service was under a *contract* for a *yearly hiring* (g).

And so where there *has* clearly *been* a *contract*, but not for any definite time, a *yearly hiring* may be inferred (h), and slight circumstances, such as an agreement to find clothes (i), will strengthen that inference. And, if the bargain be originally made for an entire year, but there is also a provision that in a given event, it shall be competent to the parties, or either of them, to put an end to or suspend the service for a part of the year, the mere existence of this condition will not render it the less a hiring for a year; a conditional hiring being the same, for most purposes, as an absolute hiring until the condition is acted upon (j).

And this presumption, that a general hiring is a hiring for a *year*, may be greatly strengthened, where there appears to be some general custom applicable to the particular trade, business or occupation in which the servant is engaged to hire such servants by the year, and evidence of such custom is always admissible (k). Thus, where (l) the plaintiff was engaged by the defendant, at a weekly salary, to edit a *new* periodical publication, evidence was admitted, on the part of the plaintiff, to show that it was the custom, in the case of editors and other persons regularly employed on newspapers, to engage them for the whole year. But as it did not appear that the custom applied to new publications, the jury found a verdict for the defendant, on the ground

Where contract for indefinite time *yearly hiring* presumed.
Conditional hiring.

Presumption of yearly hiring may be strengthened by custom;

Baxter v. Nurse.

(g) *R. v. Lyth*, 5 T. R. 327; *R. v. Long Wharton*, 5 T. R. 447; *R. v. Puddleton*, 15 East, 449; see *R. v. St. Martin, Leicester*, 8 B. & C. 677.

(h) *R. v. Macclesfield*, 3 T. R. 76; *R. v. Ardington*, 1 A. & E. 260; *R. v. Newton*, 10 B. & C. 838.

(i) *R. v. Worfield*, 5 T. R. 506.

(j) *R. v. Byker*, 2 B. & C. 114; *R. v. Ossett cum Gawthorpe*, 4 B. & Ad. 216; *R. v. St. Helen's, Auckland*, 4 B. & Ad. 718; *R. v. Walbottle*, 9 Q. B. 248; *R. v. Sandhurst*, 7 B. & C. 557; and see *R. v. Herstmonceux*, 7 B. & C. 551.

(k) It must be proved by instances, and cannot be supported by evidence of opinion merely, *Cunningham v. Fonblanque*, 6 C. & P. 44.

(l) *Baxter v. Nurse*, 1 C. & K. 10; see *Holcroft v. Barber*, 1 C. & K. 4.

that the plaintiff was not hired for a year, and an application for a new trial was refused (*m*).

Reservation
of weekly
wages.
Weekly
hiring.

Where the only circumstance from which the intended duration of a contract of hiring and service can be inferred is the reservation of wages weekly, it must be taken to be weekly hiring (*n*). As where a man hired himself to a plumber and glazier, who was to find him board, lodging and washing at 6s. per week, summer and winter (*o*); or where the hiring was merely at so much a week (*p*); or where the servant was to live with his master, who was to find him board and lodging, and pay him 2s. 6d. a week (*q*); or where a servant in husbandry was to serve for the weekly wages of 4s., board, washing and lodging, except in the harvest month, when his wages were to be increased to 10s. 6d. per week, and then again reduced to 4s. (*r*); or where the hiring was at 8s. a week, and two guineas for the harvest, to do anything the gardener should set him about (*s*); or where a gardener having asked 20*l.* a year, his master refused that, but agreed to give him so much a week (*t*); or where a man agreed "to accept the situation as foreman of the works of R. & Co., and to do all that lays in my power to serve them faithfully and promote the welfare of the said firm on my receiving a salary of 2*l.* a week and house to live in" (*u*).

Alter, where
wages paid by
piece-work,

But where wages are calculated by piece-work and paid weekly, such weekly payment will not constitute a weekly hiring (*v*).

[*m*] 6 M. & G. 935; and see *Williams v. Byrne*, 7 A. & E. 177.

[*n*] As to the notice, if any, necessary to terminate a weekly hiring, see cases of weekly tenancies; *Huffell v. Armitstead*, 7 C. & P. 56; *Toune v. Campbell*, 3 C. B. 921; *Jones v. Mills*, 10 C. B., N. S. 788.

[*o*] *R. v. Dedham*, Burr. S. C. 653; 2 Bott, 292.

[*p*] *R. v. Newton Toney*, 2 T. R. 453; *R. v. Odham*, 2 T. R. 622; *R. v. Hanbury*, 2 East, 423; *R. v. Mitcham*, 12 East, 351; see also *Baxter v. Nurse*, 6 M. & G. 935.

[*q*] *R. v. Pucklechurch*, 5 East, 382.

[*r*] *R. v. Dodderhall*, 3 M. & S. 243.

[*s*] *R. v. Lambeth*, 4 M. & S. 315.

[*t*] *R. v. Warminster*, 6 B. & C. 77.

[*u*] *Evans v. Roe*, 1. R., 7 C. P. 138.

[*v*] *Warburton v. Heyworth*, 6 Q. B. D. 1.

And if there is anything in the contract of hiring to show that it was intended to be for a year, the reservation of weekly wages will not control it. As where the hiring was at 3s. per week *the year round*, with liberty to go on a fortnight's notice, this was held to be a yearly hiring (*x*). So where the hiring was at weekly wages, with a stipulation for a month's notice to determine the contract, on the ground that it was a hiring of which no certain portion of time could be predicted for its duration, it was consequently a general hiring, which the law says is a hiring for a year (*x*). And the mere fact of receiving wages monthly is not inconsistent with a yearly hiring; a contract for a year with monthly payments is still a yearly contract (*y*).

or, where
fortnight
or month's
notice re-
quired.

Where the hiring is a yearly hiring, it cannot, in general, be put an end to by either party before the end of the year (*z*). If, therefore, on the one hand, a master wrongfully dismiss his servant during the year, the servant may maintain an action against him for such wrongful dismissal, and a jury would, in some cases, be justified in assessing his damages at the amount of wages which he would have earned had he been allowed to serve to the end of the year (*a*). Whilst on the other hand, a servant wrongfully quitting his master's service, or rightfully dismissed for misconduct during the year, cannot recover any wages for the portion of the year during which he has served (*b*).

Yearly hiring
cannot be
terminated
before the
end of the
year;

Where the defendant having established smelting

*Down v.
Pinto.*

(*w*) *R. v. Birdbrooke*, 4 T. R. 245.

(*x*) *R. v. Hampreston*, 5 T. R. 205; *R. v. Great Yarmouth*, 5 M. & S. 114; *R. v. Pershore*, 8 B. & C. 679.

(*y*) *Davis v. Marshall*, 4 L. T., N. S. 216.

(*z*) *Buckingham v. Surrey and Hants Canal Co.*, 46 L. T., N. S. 885. Even where a steward at 80l. per annum was hired "three months' notice required on each side," it was held that the three months must end with the year, *Foran v. Burke*, 12 Ir. C. L. R. 495. But see *Keon v. Hart*, Ir. R. 2 C. L. 138; 3 C. L. 388.

(*a*) See *Beeston v. Collyer*, 4 Bing. 309. The action for wrongful dismissal is treated of, *post*.

(*b*) *Spain v. Arnott*, 2 Stark. 256; *Turner v. Robinson*, 6 C. & P. 15; 5 B. & Ad. 789; *Ridgway v. Hungerford Market Co.*, 3 A. & E. 171; *Lilley v. Elwin*, 11 Q. B. 742.

works at Carthagena, in Spain, offered to employ the plaintiff as foreman, by letter, containing the following passages: "I should require you to enter into an engagement to remain with me for, at least, *three years, at my option*; salary, 250*l.* per annum." It was held, that this did not enable the defendant to put an end to the service at his will, but that it was a yearly hiring, with an option for the defendant to require the plaintiff's service for three years, or to put an end to it at the expiration of the first, second or third year (*c*).

in the absence of any stipulation or custom as to notice.

The above-mentioned rule is, however, subject to an exception in some cases of service of the Crown (*d*) and in cases in which the agreement of hiring is subject to some stipulation, either express or implied by custom (evidence of which, as we have already seen (*e*), is in all cases admissible if not inconsistent with the contract), enabling either party to determine the contract by notice (*f*). In such cases, if the contract is determined by a notice, in accordance with the custom, the servant

(*c*) *Down v. Pinto*, 9 Ex. 327. In *Cook v. Paxton*, 4 H. & N. 368, under an agreement by the Army Works Corps, to be subject to the Mutiny Act and the Articles of War, and which also contained a stipulation as to notice to quit, the men were considered only to be entitled to notice according to the agreement, and not to a formal discharge such as is contemplated by the Mutiny Act. An agreement for twelve months *certain*, "after which time either party shall be at liberty to terminate this agreement by giving to the other a three months' notice in writing," was held to terminate at the end of the year without any notice, *Langton v. Carleton*, L. R. 9 Ex. 57. See *Brown v. Symons*, *post*, p. 70.

(*d*) Servants of the Crown, civil as well as military, except in special cases where it is otherwise provided by law, hold their offices only during the pleasure of the Crown. So where a consular agent was engaged for a period of three years *certain* it was held that the contract was determinable at the pleasure of the Crown, *Down v. Rep.*, (1896) 1 Q. B. 116; *Gould v. Stuart*, (1896) A. C. 575. But a naval officer cannot resign his commission without permission from the Crown, *Hearson v. Churchill*, (1892) 2 Q. B. 111.

(*e*) *Ante*, p. 46.

(*f*) A custom whereby either party to the hiring of a domestic servant is entitled to determine the service at the end of the first calendar month by notice given at or before the expiration of the first fortnight would not be inconsistent with the well-known custom of a month's notice or a month's wages, and, if proved, would probably be held to be reasonable. There is no such notorious custom to that effect, that the Court will take judicial notice of it. Its existence is a question of fact which must be proved by evidence in any particular case in which reliance is placed on it, *Moutt v. Halliday*, (1898) 1 Q. B. 125.

is entitled to recover wages for the fractional portion of the year during which he has served.

Thus, in the case of domestic and menial servants, with regard to whom there is a well-known rule, founded solely on custom, that their contract of service may be determined *at any time* by giving a month's warning or paying a month's wages (g), if their contract of hiring is so determined, they are entitled to a proportionate amount of wages for the time they have served. But it is conceived to be perfectly clear, notwithstanding a notion to the contrary, which is believed to be not uncommon, that a domestic or other yearly servant wrongfully quitting his master's service forfeits all claim to wages for that part of the current year during which he has served, and cannot, after having wilfully violated the contract according to which he was hired, claim the sum to which his wages would have amounted had he kept his contract, merely deducting therefrom one month's wages.

Domestic
servants,

month's
warning or
month's
wages,

wrongfully
quitting for-
feit all wages,
not merely
month.

This, at first sight, may appear rather harsh to some; but it is believed to be not only the law, but far more consistent with common sense and common honesty than to allow a man, at one and the same moment, to break a contract and claim a benefit under it, especially when, upon merely giving notice to his master, and paying (or agreeing to allow his master to deduct from the amount due to him) a month's wages, he could leave at any time; and the practical effect of adhering to the strict letter of the law is merely to compel the servant to give his master notice when he wants to leave, which can be but little trouble to him, and will, in most cases, save the master a

(g) *Fawcett v. Cash*, 5 B. & Ad. 908; *Beeston v. Collyer*, 4 Bing. 313; *Turner v. Mason*, 14 M. & W. 112; *Metzner v. Bolion*, 9 Exc. 519, 520. *Scoble*, it should be a calendar month's wages. See *Gordon v. Potter*, 1 F. & F. 644, in which Hill, J., directed the jury that they must give a cook as damages for wrongful dismissal the accruing wages up to the time when she was discharged, and a calendar month's wages in addition, without board wages, as a master had a right to discharge a servant simply by payment of a month's wages in addition to the accruing wages up to the time of the discharge.

great deal of unnecessary inconvenience and trouble, and sometimes loss.

Who are
within rule as
to menial
servants.

Gardener is.

Huntsman is.
Nicoll v.
Greaves.

No general rule can be laid down as to who do and who do not come within the category of domestic or menial (*h*) servants. Each case must depend upon its own circumstances. It has, however, been held (*i*) that a head gardener, at 100*l.* a year, who resided in a detached house belonging to his master within his master's domain, and had the privilege of taking in apprentices, and had taken two apprentices for a year at 15*l.* premium and had five under-gardeners employed for his assistance in the garden, was a menial servant, and only entitled to a month's warning. Again, it has been held (*j*) that the hiring of a huntsman by the master of the old Berkshire foxhounds on the following terms might be terminated at a month's notice. The terms were, "100*l.* a year; draft hounds; house; coals and bones; leave to keep a pig; two coats; two waistcoats; two pair of breeches; two pair of boots; one cap; one whip; one pair of spurs." In giving judgment in that case Erle, C. J., said:

"The point is whether the plaintiff is in the class of servants spoken of in the cases and in treatises as domestic or menial servants, because it is established law that a hiring for a year of any person in that class is subject to the condition that either party may determine it by giving a month's notice or a month's wages. Now is the plaintiff in that class of servants? In the excellent treatise on Master and Servant by Mr. Manley Smith, it is stated that 'no general rule can be laid down as to who do and who do not come within the category of menial servants.' It seems to me that the reason of the general rule in these cases is, that there are some contracts of service which bring the parties into close proximity with one another, and which, though such association may be valuable, renders it the interest of both that the contract should be capable of being determined before the end of the year.

(*h*) The adjective "menial" is formed from the word "meiny" (see Shakspeare, *King Lear*, Act 2, Sc. 4—*Earl of Kent*: "They summoned up their meiny, straight took horse,") which comes from the old French *meisnée* or *maisonnée* (Low Latin, *mansionata*) meaning "household." See *Skeat's Etymological Dictionary*.

(*i*) *Noulan v. Ablett*, 2 Cr., M. & R. 54; see *Johnson v. Blenkinsopp*, 5 Jur. 879, *ante*, p. 47. In *Pearce v. Lansdowne*, 69 L. T. Rep. 316, a potman at a public-house was held to be "a domestic or menial servant" within sect. 10 of the Employer and Workmen Act, 1875.

(*j*) *Nicoll v. Greaves*, 17 C. B., N. S. 27.

"Where the duties of the servant are such that he is required to be frequently near his master, if any ill-feeling should arise between them the presence of the servant would be a constant source of irritation to the master: and, on the other hand, it may happen that a well-intentioned servant may have a dissatisfied master constantly finding fault with him, and the sooner he is free from such service the greater will be his happiness. The law is mutual, and it is to the advantage of both parties that such a contract when it turns out that the connection is incompatible with comfort on either side should be determinable by a month's notice. Does a huntsman then come within that description of servant? It seems to me that he would have to come frequently into communication with the person who keeps the hounds, and if the huntsman were so minded he might make the keeping of the hounds a source of irritation instead of enjoyment to the person who keeps them. I take into my mind also the fact that there might be masters of hounds who, if anything wrong were done, might be very violent, and give great annoyance to those who were dependent on them. I think in such case it would be to the advantage of the servant, if he had a proper spirit, to be able to say, 'This is treatment I cannot submit to and I will leave your service at the end of a month.' Now I think, therefore, a huntsman comes within that class or description of servant to which I have been referring. In the Tax Acts he is considered within the class of servants of luxury in respect of whom the master is assessed, as contra-distinguished from servants engaged in husbandry, for whom he is not assessed."

*Nicoll v.
Greaves.*

His Lordship then referred to *Nowlan v. Ablett* and *Johnson v. Blenkinsopp*, and added:

"I think these cases explain the ground of my decision that, although the plaintiff contracted for a yearly hiring at 100*l.* a year and was to receive bones and other perquisites, which contemplated the continuance of the service for a year; yet, as he comes within the class of menial servants, it was with the understood condition that the hiring might be determined at any time if a month's notice was given."

But a jury of the county of Surrey have held (*k*) that a gentleman was not justified in giving only a month's notice to a farm bailiff, and gave a verdict for a year's wages. And the Court of Exchequer has held (*l*), so far as the question is to be treated as a matter of law, that a governess, at 60*l.* a year and board and lodging, does not fall within the rule by which a menial or domestic servant may be discharged with a month's notice or a month's

Farm bailiff
not.

Governess
not.

(*k*) *Louth v. Drummoud*, Kingston Spring Assizes, 1849 (see *Times*, March 28), *coram* Parke, B., who left it to the jury.

(*l*) *Todd v. Kerrieh*, 8 Ex. 151.

Tutor.

Housekeeper
to hotel.Custom ap-
plicable in
other cases.Commercial
traveller
three months.Agent in
woollen trade
one month.Newspaper
printer, &c.

Editor.

wages. The position which she holds, the station she occupies in a family, and the manner in which such a person is usually treated in society, certainly place her in a very different situation from that which mere menial and domestic servants hold. The same may be said of a tutor. In Ireland it has been held that the housekeeper to a large hotel was not a menial servant (*m*). But in these and similar cases an arrangement should be made at the time of hiring as to the notice expected or required, or intended to be given.

In cases to which the custom applicable to domestic servants does not apply, and in which no specific agreement has been made as to the notice to be given for the purpose of determining the contract, that question must be determined by the custom applicable to the particular trade or calling with reference to which the service is to be rendered. Thus evidence has been admitted of a usage of trade enabling a master to dismiss a commercial traveller, at 150*l.* a year, upon giving three months' notice (*n*). Evidence has also been admitted of a custom in the woollen trade to dismiss an agent at a month's notice (*o*). And in *Mortimer v. Prowett* (*p*), evidence was given to show that, where no condition was expressed in the agreement of hiring, it was usual to give a printer (newspaper) one month's, or at least a fortnight's notice, a publisher three months, and a sub-editor to the end of the current year, and the jury gave the plaintiff, who filled all these places, one month's wages.

In *Hollings v. Robinson* (*q*) the plaintiff, who was engaged by the defendant as editor of the *Farm and Home* at 2*l.* 10*s.* a week, was held entitled to damages for wrongful dismissal, based upon the view that six months' notice should have been given to him.

(*m*) *Lavelle v. Linden*, Ir. Rep., 10 C. L. 188.

(*n*) *Metzner v. Bolton*, 9 Exc. 518.

(*o*) *Parker v. Thetson*, 27 L. J., C. P. 236.

(*p*) Q. B., Nisi Prius, June 18, 1856.

(*q*) Q. B., Nisi Prius, February 23, 1884; *Foxbourn v. Vernon*, 10 Times L. Rep 617.

With regard to clerks, juries in London generally find that they are entitled to three months' notice, though, of course, that custom may be excluded by the terms of a particular hiring (*r*). A clerk to a telegraph company was held to be entitled to one month's notice (*s*).

Clerks.

By analogy to the rule which prevents a yearly tenancy from being determined before the end of the year, it is sometimes contended that particular yearly hirings can only be determined in a similar manner. This point will, in most cases, depend upon the custom of the trade or business in question. But where a schoolmaster was appointed, by trustees of a school, on the following (among other) terms: "The trustees shall pay you at the rate of 55*l.* per annum, and no more, so long as, by mutual consent, you shall retain the office of master," &c., "the appointment to be subject to termination by three months' notice from either party,"—it was held that the three months need not terminate with the year (*t*). And Coleridge, J., in holding the analogy of tenants from year to year not to be applicable to the case, said: "Nothing is said in the resolution or letter that the notice is to be given to terminate at the end of a year. No doubt there is a rule, with respect to tenants of land from year to year, that a notice to quit must be to quit at the end of a complete year. But no authority has been adduced to show that such a rule is applicable to notices to quit in all cases. In the case of land, there would be great inconvenience, arising from the nature of the property and the course of husbandry, to allow the relation of landlord and tenant to be terminated at any time; but with regard to a school, it must be of great importance that a master, who has done some act not sufficient to justify immediate expulsion, should not be allowed to continue in his

Analogy to tenancy from year to year,

held not applicable.
Reason.

(*r*) *Fairman v. Oakford*, 29 L. J., Exc. 459.

(*s*) *Fibert v. Eastern Telegraph Co.*, 1 Cab. & E. 17.

(*t*) *Ryan v. Jenkinson*, 25 L. J., Q. B. 11. See *Forgan v. Burke*, and *Keon v. Hart*, *ante*, p. 63, note (*z*); and *Bridges v. Potts*, 33 L. J., C. P. 338, 348.

office until the expiration of the current year. It seems, therefore, to me, that the trustees are justified in giving a three months' notice to terminate the schoolmaster's holding at any time during the year."

Yearly hiring may be terminated at end of first year.

It has been held that an agreement of hiring (whereby wine merchants hired a commercial traveller) "to be binding between the said parties for twelve months certain from the date thereof, and continue from time to time until three months' notice in writing be given by either party to determine the same," may be terminated at the end of the first twelve months by three months' notice (*u*).

HOW FAR THE MASTER IS BOUND TO FIND WORK FOR THE SERVANT.

Implied contract by master to find work.

A contract of hiring does not necessarily include a stipulation that the master will find work for the servant, though such a stipulation may sometimes, in cases where no definite terms have been made as to this matter, be implied from other stipulations or expressions to be found in the contract. But when parties have put into writing the terms upon which they agree, it is a dangerous thing lightly to imply what they have not expressed.

The rule of the Court as to implying stipulations in contracts has been thus laid down (*v*) by Lord Esher, M. R. :

"A large number of cases have been cited, in some of which the Court implied a stipulation, and in others refused to do so. In my opinion it is useless to cite such cases so far as they merely show that in the particular case an implication was or was not made. The only use of citing such cases is where they lay down the rule as to such implications, upon which the Court will act in dealing with the particular case before

(*u*) *Brown v. Symons*, 29 L. J., C. P. 251.

(*v*) *Hamlyn v. Wood*, (1891) 2 Q. B. 488. In this case a firm of brewers agreed to sell to the plaintiffs all the grains made by them, at certain prices for the next ten years following the agreement; and the Court refused to imply a term in the contract to the effect that the brewers would not by any voluntary act of their own (as by a sale of their brewery) prevent themselves from continuing the sale of grains to the plaintiffs for the period mentioned.

it. I have for a long time understood that rule to be that the Court has no right to imply in a written contract any such stipulation unless, on considering the terms of the contract in a reasonable and business manner, an implication necessarily arises that the parties must have intended that the suggested stipulation should exist. It is not enough to say that it would be a reasonable thing to make such an implication. It must be a necessary implication in the sense that I have mentioned. In the case of *The Moorcock* (w), Bowen, L. J., laid down the principle upon which such implications must be made in terms which seem to me to be really an expansion of the terms I have used, and with which I entirely agree."

Thus (x) where two parties mutually agreed for a fixed period that one should employ the other as his sole agent for the sale of coals at Liverpool, and that the latter would not, during the continuancy of his agency, act as agent there for the sale of any other steam coal, the House of Lords held, upon consideration of all the terms of the contract, that no term could be implied in it binding the employer to keep his colliery, or to do more than employ the other party as his agent in the sale of such coals as he sent to Liverpool.

But in another case (y) the defendant agreed to employ the plaintiff for five years as agent and traveller for the sale of the various goods "manufactured or sold" by the defendant as should from time to time be forwarded by the defendant to the plaintiff. The payment of the plaintiff was to be a percentage on the goods which he sold for the defendant. Two years after the agreement the defendant's factory was burnt down, and in consequence he gave up business. There being no reference in the agreement to the defendant's factory, and the plaintiff's employment not being confined to articles manufactured by the defendant, the Court held that no condition having reference to the continued existence of the defendant's factory could be implied in the agreement; and the plaintiff's payment being by commission the defendant remained bound to send him a

(w) *The Moorcock*, 14 P. D. 64.

(x) *Rhodes v. Forwood*, 1 App. Cas. 256.

(y) *Turner v. Goldsmith*, (1891) 1 Q. B. 544.

reasonable amount of samples to enable him to earn the commission.

The word "employ" is capable of more than one meaning, but the use of this word in a contract of hiring does not necessarily bind the master to find work for the servant during the continuance of the contract.

A company (z) agreed to "retain and employ" the plaintiff as their attorney at a fixed yearly salary in lieu of rendering an annual bill of costs for the business transacted by him for the company, for which salary he was to advise and act for the company on all occasions in all matters connected with the company, with certain exceptions. The House of Lords held that though the company were bound to pay the agreed salary for at least a year, they were not bound to supply the plaintiff with business as an attorney and solicitor at all events, or to require his services as attorney or solicitor whenever they had occasion for the advice or services of an attorney or solicitor.

So, too, where the defendants agreed to continue to engage and employ the plaintiff as their representative salesman for four years at a salary of 200*l.* a year, and before the expiration of that period refused to give him any work as their representative salesman, though willing to pay the agreed salary, the Court of Appeal were of opinion that the defendants were not bound by the contract to provide the plaintiff with any work (a).

(z) *Emmens v. Elderton*, 13 C. B. 495. Whether an agreement by a company to employ a particular solicitor for all their business and to continue to do so, however incompetent he might prove to be in physical health or otherwise, until they could convict him of some positive misconduct, would be enforced by the Court was doubted by Lord Cairns, L. C., in *Eley v. Positive Government Security Life Assurance Co.*, 1 Ex. D. 88.

(a) *Turner v. Sardon*, [1901] 2 K. B. 653. In *Lagerwall v. Wilkinson*, 80 L. T. Rep. 55, the defendant engaged the plaintiff as a commercial traveller for a certain term on payment of a fixed salary and a fixed allowance as travelling expenses. On finding the matter unprofitable they ceased to give the plaintiff any employment but continued to pay him the salary. The plaintiff sued them for damages done to his trade connection by their refusal to send him on journeys and for loss of the amount of the allowance of travelling expenses which he would have saved. Bigham, J., held the action unfounded.

A duty on the master to provide work for his servant may, however, be implied from other terms in the contract such, for instance, as the method of paying wages, where the payment is to be by commission according to the amount of work done (*b*) ; or from the nature of the employment (*c*).

An agreement to pay certain stipulated wages in proportion to the work done does not necessarily imply an obligation on the part of the master to find work so as to enable the servant to earn wages.

Thus, where (*d*) the defendant, who was the owner of a colliery, entered into an agreement with the colliers and workmen, and amongst others the plaintiff, whereby the said owner retained and hired the said other parties thereto "to hew, work, fill, drive, and put coals and do such other work as may be necessary for carrying on the said colliery as they shall be required or directed to do by the said owners, or their viewers or agents, at the respective rates and prices, and on the terms," &c. following: "First. The said owners agree to pay the said hereby hired parties once a fortnight, upon the usual and accustomed day, the wages by them to be earned, at the following rates, viz."—(specifying the rates, with regulations as to the manner of working). "Fifth. The said parties hereby hired shall, during all the times the pit shall be laid off work, continue the servants of the said owners, subject to their orders and directions, and liable to be employed by them at such work, as they shall see fit. Sixth. The said hewers hereby hired shall, when required, except when prevented by sickness or other sufficient unavoidable cause, do and perform a full day's work on each and every working day, or such quantity of work as shall be fairly deemed equal to a day's work, not exceeding eight hours, and shall not leave their work until such day's work, or

Agreement
with colliers
Williamson v.
Taylor.

(*b*) *Turner v. Goldsmith*, *supra*, note (*y*).

(*c*) *Bunning v. Lyric Theatre Ltd.*, 71 L. T. Rep. 396.

(*d*) *Williamson v. Taylor*, 5 Q. B. 175.

quantity of work, is fully performed or finished to the extent of each man's ability; and in default thereof, each of the said parties hereby hired and so making default shall, for every such default, forfeit and pay to the said owners 2s. 6d. The pit to commence coal work at such times in the morning as shall be required to suit the trade." Then followed other clauses not material here. It was held that the agreement contained no promise on the part of the defendant to employ the plaintiff at reasonable times for a reasonable number of working days during the term, and that no action would lie against the defendant for not doing so, although the plaintiff was thereby unable to earn wages.

But wages
must never-
theless be paid
if agreed on.

But where the contract of hiring provides for the payment of certain wages (not in proportion to the work done), although it may be optional on the part of the master to find work, and he may, if he pleases, discontinue his business, yet he must nevertheless pay the wages agreed on, whether he find work for the servant or not, or he will render himself liable to an action for such damages as a jury may think proper to give.

*Asplin v.
Austin.*

Thus, where the plaintiff agreed to manufacture for the defendant, with the materials and machinery to be provided by him, cement of a certain quality, and on condition of his doing so, the defendant agreed to pay the plaintiff weekly 4*l.* for two years, and 5*l.* weekly for the following year, and then to receive him as a partner; the plaintiff also further agreed to teach the defendant how to manufacture certain kinds of cement. Each party bound himself in a penal sum to fulfil the agreement, and the defendant afterwards covenanted by deed for the performance of the agreement on his part. It was held that the stipulations in the agreement did not raise an implied covenant that the defendant should employ the plaintiff in the business during two or three years, although the defendant was bound by express words to pay the plaintiff the stipulated wages during those periods respectively, if the plaintiff performed, or

was ready to perform, the condition precedent on his part (e).

And where (f) a declaration stated, that by deed between the defendant, and D., and the plaintiff, the plaintiff covenanted that D. should, for five years from the date, serve the defendant in the art of a surgeon dentist, and attend for nine hours each day, and the defendant, in consideration of the services to be done by D., covenanted with the plaintiff that he, the defendant, would, during the five years (in case D. should faithfully perform his part of the agreement, particularly as to the nine hours, but not otherwise), pay D. 35s. per week for the first year, 2*l.* per week for the second and third, and 2*l.* 2s. per week for the fourth and fifth; that D. was in the service for some time after the making of the deed till dismissed, and during all that time faithfully performed service, &c., and was willing and tendered to perform, &c. to the end of the five years, but the defendant, during the term, refused to permit D. to remain in his service, and dismissed him. It was held, on motion in arrest of judgment, that the declaration did not show any covenant corresponding to the breach.

Dunn v. Sayles.

In the following cases an agreement by the master to find work for the servant was implied. In *Pilkington v. Scott* (g), it was held that stipulations in an agreement whereby a workman was to be paid by the piece, that his master should pay him a moiety of his wages during any depression of trade, and might dismiss him on giving him a month's wages or a month's notice, distinguished the case from that of *Aspdin v. Austin*, and that, looking at

Agreement to find work implied.

Pilkington v. Scott.

(e) *Aspdin v. Austin*, 5 Q. B. 671; see *Rust v. Nottidge*, 1 E. & B. 99; *Burton v. Great Northern Railway Co.*, 9 Exc. 507; *Sharp v. Waterhouse*, 27 L. J., Q. B. 70.

(f) *Dunn v. Sayles*, 5 Q. B. 685. In *M'Intyre v. Belcher*, 14 C. B., N. S. 654, Erle, C. J., remarked, "Many persons have considered the cases of *Dunn v. Sayles* and *Aspdin v. Austin* as monstrosities. They were a good deal observed upon in the case of *Emmens v. Elderton*, both in the Exchequer Chamber and in the House of Lords." But see Cockburn, C. J., in *Churchward v. Reg.*, L. R., 1 Q. B. 173.

(g) 15 M. & W. 657; see the agreement, *ante*, p. 35.

*Hartley v.
Cummings.*

the whole of the agreement, the master was bound to employ the servant in the sense of finding him actual employment, so as to enable him to earn wages, subject to the condition of notice. And a similar decision was made in *Hartley v. Cummings* (h), where there was an engagement on the part of the master to find the servant other work, in the event of the master not requiring the piece-work stipulated for, so as to enable the servant to earn a certain amount of wages per week.

R. v. Welch.

And again, in *R. v. Welch* (i), where the workman, in consideration of a small sum lent in advance of wages, "and of the wages thereafter agreed to be paid to him" by the masters, agreed to work for and serve the said masters, as a tinplate worker, and not to work for or serve any one else without their leave in writing, for the full term of twelve months then next, and also until the expiration of three calendar months' notice by the workman given to the masters to determine the service, and to perform his work in a workmanlike manner, and not to absent himself during customary hours of work. And the masters, in consideration of the good and faithful services of the workman, agreed to pay him "on the Saturday night in every week during the aforesaid term (usual holidays excepted) all such wages as the articles made by him as aforesaid shall amount to, at their usual workmen's prices for similar articles." And the agreement also contained a proviso enabling either party to determine the agreement after twelve months by giving three calendar months' notice. It was held, in accordance with *Pilkington v. Scott*, that the agreement was not void for want of mutuality, and that the masters were bound to provide work; and Lord Campbell said, "The necessity of giving notice clearly shows that there is some obligation on the employer. What was that? To find reasonable employment according to the state of

(h) 5 C. B. 247; see this case, *ante*, p. 35.

(i) 2 E. & B. 357; see *Re Bailey* and *Re Collier*, 3 E. & B. 607, 615.

the trade. That is not an unilateral agreement, but a mutual agreement, with something to be done on each side."

And a similar decision was made in *Whittle v. Frankland (j)*, upon an agreement between a collier and a coal company. In that case, Cockburn, C. J., said :

Whittle v. Frankland.

"The agreement by the appellant is to serve the company faithfully and exclusively as their servant from the date of the agreement until the expiration of twenty-eight days' notice, and obey their lawful commands ; and on the part of the employers the agreement is, that they will pay him wages fortnightly, and not discharge him without twenty-eight days' notice. There is no express agreement that they will find him work, but that arises by necessary implication from the above two stipulations. The agreement would be perfectly illusory on the part of the employers if they could say that though they were obliged to keep him in their employ, they were yet not bound to supply work. The objection therefore as to want of mutuality fails."

AGREEMENTS IN RESTRAINT OF TRADE CONTAINED IN CONTRACTS OF HIRING AND SERVICE.

It frequently happens that professional men, manufacturers and tradesmen, on taking clerks, apprentices, servants and workmen into their employ, require them to enter into an agreement that they will not on leaving their service carry on a profession, manufacture or trade similar to their own within certain limits ; and this is done with a view to secure themselves from competition with those who having been in their service have thereby had opportunities of becoming acquainted with their mode of carrying on business and secrets of trade, and of insinuating themselves into the good graces of their masters' customers.

Agreements in restraint of trade.

Such contracts, being in restraint of trade (*k*), have

(j) 31 L. J., M. C. 81 ; and see *M'Intyre v. Belcher*, 32 L. J., C. P. 255 ; *Stirling v. Maitland*, 34 L. J., Q. B. 1, where a covenant to carry on a business was implied in an agreement to pay the plaintiff a certain sum in case A. was "displaced" from his employment as agent to defendants.

(k) Where the vendor of a business covenanted not to carry on for five years the business of a manufacturer under the name of John Hallam or Hallam Brothers, it was held that as the covenant did not restrain him from employing his talents, industry, or capital in any useful undertaking, but only from using a certain name in his business, it was not a covenant in restraint of trade and was valid, *Fernon v. Hallam*, 34 Ch. D. 748.

been looked upon with much suspicion by the Courts on the ground of their being opposed to the public interests. But many of these restraints of trade are perfectly consistent with the public interests. In the case of a tradesman hiring a servant on the terms that the servant will not carry on the same trade within certain limits, "The public," said Parke, B. (*l*), "derives an advantage in the unrestricted choice which such a stipulation gives to the employer of able assistants, and the security it affords that the master will not withhold from the servant instruction in the secrets of his trade, and the communication of his own skill and experience, from the fear of his afterwards having a rival in the same business." And it was justly observed by Lord Wynford (*m*) that "the effect of such contracts is to encourage rather than cramp the employment of capital in trade and the promotion of industry."

The law upon this subject seems to have passed through considerable changes.

Law in former
days.

Time was when all agreements in restraint of trade or liberty to work were regarded as against public policy and invalid. In the well-known *Dyers' case* (*n*) the obligation sued upon was not to carry on the trade of a dyer in a certain place for half a year, and this agreement drew from Hull, J., the remark that the plaintiff ought to be imprisoned and fined for obtaining such a bond. Again (*o*), in the last year of Queen Elizabeth, in an action on a bond conditioned to pay 20*l.* if B. should use the trade of a haberdasher within the county of Kent before Midsummer, 1604, it was resolved by the Court "that this condition is against law, to prohibit or restrain any to use a lawful trade at any time or at any place; for as well as he may restrain him for one time or one place, he may restrain him for longer times and more

l *Mallon v. May*, 11 M. & W. 653.

m *Hamor v. Ashford*, 3 Bing. 326.

n *Y. B. 2 Hen. 5, fo. 5, pl. 26.*

o *Calgate v. Bachelor*, Cro. Eliz. 872; nom. *Claygate v. Bachelor*, Owen, 113.

places, which is against the benefit of the commonwealth; for being freemen, it is free for them to exercise their trade in any place."

Subsequently a distinction came to be taken between covenants in general restraint of trade and those where the restraint was only partial, and this distinction was recognized and given effect to by Lord Macclesfield in a celebrated judgment (*p*), in which he laid down various propositions showing to what extent agreements in restraint of trade might be lawful. The rule laid down by the Court in that case was stated by Tindal, C. J. (*q*), to be that voluntary restraints by agreements between the parties, if they amount to a general restraint of trading by either party, are void, whether with or without consideration; but particular restraints of trading, if made upon a good and adequate consideration, so as it be a proper and useful contract, that is, so as it is a reasonable restraint only, are good.

The stringency of this rule was again relaxed in 1837, when it was decided (*r*) that it is not necessary, in order to support an agreement in restraint of trade, that the consideration should be "adequate" in the opinion of the Court. This decision has never been disputed, so that it is now only necessary that there be some legal consideration of value, though the *quantum* of consideration may enter into the question of the reasonableness of the contract (*s*).

Consideration
for the con-
tract.

Thus in the case of an agreement in partial restraint of trade, the general rule is that, provided that valuable consideration is given for the restraint, the only test of its legality is its reasonableness.

In a considered judgment (*s*) in the Court of Appeal, Lindley, M. R., used the following words:

Reasonable-
ness of the
contract.

"The law as now settled cannot in my opinion be more accurately expressed than it was by Lord Macnaghten in *Nordenfelt v. Maxim*

(*p*) *Mitchel v. Reynolds*, 1 P. Wms. 181; 1 Sm. L. C.

(*q*) *Horner v. Graves*, 7 Bing. 735.

(*r*) *Hitchcock v. Coker*, 6 A. & E. 438.

(*s*) *Underwood and Son v. Barker*, (1899) 1 Ch. 300.

Nordenfelt Guns and Ammunition Co. (t). He said: 'The true view at the present time I think is this: The public have an interest in every person's carrying on his trade freely; so has the individual. All interference with individual liberty of action in trading, and all restraints of trade of themselves, if there is nothing more, are contrary to public policy and therefore void. That is the general rule. But there are exceptions: restraints of trade and interference with individual liberty of action may be justified by the special circumstances of a particular case. It is a sufficient justification, and indeed it is the only justification, if the restriction is reasonable—reasonable that is in reference to the interests of the parties concerned, and reasonable in reference to the interests of the public, so framed and so guarded as to afford adequate protection to the party in whose favour it is imposed, while at the same time it is in no way injurious to the public.'"

If the reasonableness of the restraint is the test to be applied to all agreements in restraint of trade, it seems that the distinction formerly drawn between agreements in general restraint of trade and agreements in partial restraint is not now of much consequence. For, as pointed out by Lord Macnaghten in the case just referred to, assuming the rule to be that general restraints are void as being contrary to public policy, and not on any other ground, an exception must surely arise, if exceptions are admissible at all, as soon as you find that the particular case under consideration is not contrary to public policy, and so not opposed to the principle on which the rule is founded. And Lord Herschell, L. C., in the same case, said that when once it is admitted that, whether the covenant be general or particular, the question of its validity is alike determined by the consideration whether it exceeds what is necessary for the protection of the covenantee, the distinction between general and particular restraints ceases to be a distinction in point of law.

The law as to contracts in restraint of trade was founded on public policy according to the ideas, and having regard to the business organization of the time, and public policy is at least as much concerned in holding persons to their contracts as in prohibiting contracts in restraint of trade.

Where an agreement restraining a person from carrying on business is entered into with another person engaged in a similar business for the purpose of protecting him from rivalry in that business, and is no wider than is reasonably necessary for his protection in that business, it is difficult to imagine the circumstances which can render such an agreement injurious to the public interests of the country.

The reasonableness of a contract depends on its true construction and legal effect, and is consequently a question for the Court (*u*). Evidence from persons in the trade is admissible to inform the Court of its nature, and of what is customary in it, and of anything requiring attention in the mode of conducting it, and of any particular dangers requiring precautions, and what precautions are required in order to protect a person carrying on the business from injury by a person leaving his service, but the opinion of witnesses as to the reasonableness of the contract is out of place (*v*). The ordinary rules of construction should be first applied to find out what is the real meaning of the contract, and a stipulation in restraint of trade ought not to be construed with a bias as being *prima facie* illegal, but fairly (*w*). Where a man of sufficient age and capacity knowingly enters into a contract of service which is in partial restraint of trade, the onus lies on him to prove that the restraint goes beyond what was reasonably necessary (*x*).

Question of reasonableness is for the Court.

If the Court on a fair construction of the whole agreement should come to the conclusion that the restraint imposed is larger than is reasonably necessary for the protection of the employer, but that the covenant is so framed as to be severable, it will enforce the covenant to

Covenant may be severable if partly reasonable and partly unreasonable.

(*u*) *Tallis v. Tallis*, 1 E. & B. 391.

(*v*) *Haynes v. Doman*, (1899) 2 Ch. 13.

(*w*) *Mills v. Dunham*, (1891) 1 Ch. 576.

(*x*) *Mallan v. May*, 11 M. & W. 653; *Horner v. Graves*, 7 Bing. 735; *Rousillon v. Rousillon*, 14 Ch. D. 351; *Haynes v. Doman*, (1899) 2 Ch. 13. Such a contract entered into by an infant, if beneficial, will be binding on him, *Evans v. Ware*, (1892) 3 Ch. 502.

the extent to which it is reasonable, while declining to enforce such part of it as is unreasonable. Covenants in restraint of trade have been held to be divisible in this way as regards the business not to be carried on (*y*), and as regards space (*z*), and as regards time (*a*).

But this rule only applies where the covenant, though single in form, really consists of two parts which can be treated independently. It does not enable the Court to reject a proviso to a clause which makes unreasonable a clause which otherwise is reasonable (*b*); and so where a covenant restrained a servant after leaving the covenantee's employment from being concerned or interested in "any business whatsoever" within a certain distance of High Holborn, the Court, holding that the covenant as it stood was void, refused to reject the general restraint and make it good by limiting it to the business of a tailor, which was the kind of business carried on by the covenantee (*c*).

Meaning of
reasonableness.

Coming now to the consideration of the meaning of "reasonableness" in this connection, no precise limit can be laid down within which the restraint would be reasonable, and beyond which excessive. "A better test," said Tindal, C. J., "cannot be applied to the question whether reasonable or not, than by considering whether the restraint is such only as to afford a fair protection to the interests of the party in favour of whom it is given, and not so large as to interfere with the interests of the public. Whatever restraint is larger than the necessary protection of the party can be of no benefit to either, it can only be oppressive; and, if oppressive, it is in the eye of the law unreasonable" (*d*).

(*y*) *Robinson v. Heuer*, (1898) 2 Ch. 451; *Rogers v. Maddocks*, (1892) 3 Ch. 346; *Maxim-Nordenfelt Guns, & Co. v. Nordenfelt*, (1893) 1 Ch. 630.

(*z*) *Mallan v. May*, 11 M. & W. 653; *Price v. Green*, 16 M. & W. 346; *Darves & Co. v. Lowen*, 64 L. T. Rep. 655.

(*a*) *Nicholls v. Stytton*, 10 Q. B. 346; *Baines v. Geary*, 35 Ch. D. 154.

(*b*) *Perls v. Saalfeld*, (1892) 2 Ch. 149.

(*c*) *Baker v. Hedgecock*, 39 Ch. D. 520. See *Mills v. Dunham*, (1891) 1 Ch. 576.

(*d*) *Horner v. Graves*, 7 Bing. 743; cited with approval by Landley, L. J.

The time at which the contract was entered into is the moment at which its reasonableness is to be considered (*e*).

There must be some limit to the restraint imposed by the agreement, and so where the Court construed a covenant to mean that the defendant was never thereafter to go into any business at all without the consent of the plaintiff, they held it to be unreasonable and void (*f*). And where a firm carried on business as galvanizers in Wolverhampton and London, an agreement whereby a retiring partner bound himself to retire "so far as the law allows" from the trade or business of the partnership, the agreement was held to be too vague to be enforced (*g*). Consequently agreements by which employers protect themselves from the future rivalry of those whom they take as servants are usually limited in some way either as regards the time during which the covenant is to extend, or as regards the places to which the covenant applies, or as regards the kind of business which the servant undertakes not to enter into. There are several instances in which agreements un-

Limits of restraint.

As to time.

limited in point of time, so that they in fact were to last during the life of the covenantor, have been held good, reasonable limits as regards space and business being also provided for in the agreement (*h*).

As to space.

Agreements not to carry on particular kinds of business for a fixed period of time were at one time held to

in *Rogers v. Maddocks*, (1892) 3 Ch. 346, and adopted by Lord Herschell, L.C., in *Nordenfellt v. Maxim-Nordenfellt Guns and Ammunition Co.*, (1894) A. C. 535.

(*e*) *Rannie v. Irvine*, 7 M. & G. 970; *Haynes v. Doman*, (1899) 2 Ch. 13.

(*f*) *Perls v. Saalfeld*, (1892) 2 Ch. 149; *Baker v. Hedgcock*, 39 Ch. D. 520.

(*g*) *Davies v. Davies*, 36 Ch. D. 359.

(*h*) *Chesman v. Nainby*, 2 Lord Raym. 1456 (not to carry on the business of a linendraper within half a mile of a certain house); *Elves v. Croft*, 10 C. B. 241 (butcher within five miles); *Hitchcock v. Coker*, 6 A. & E. 438 (druggist within three miles of Taunton); *Hastings v. Whitley*, 2 Ex. 611 (surgeon within ten miles of S.); *Mumford v. Gething*, 7 C. B., N. S. 305; *Haynes v. Doman*, (1899) 2 Ch. 13 (hardware manufacturer within twenty-five miles of Dudley); *Hood v. Jones*, 81 L. T. Rep. 169 (hay and corn dealers within two miles).

be void if the agreement were unlimited as to space (*i*). "But cases of that kind," said Fry, J. (*j*), "in which an unlimited prohibition has been spoken of as void, relate only to circumstances in which such a prohibition has been unreasonable." In more recent cases it has been held that there is no such rule as that a covenant in restraint of trade is necessarily void if unlimited in regard to space, and such covenants have in certain circumstances been held reasonable and valid (*k*).

How distance
to be measured.
Leigh v. Hind.

When an agreement not to carry on a trade within a certain distance of a particular place has been established, the distance should be measured by the nearest mode of access, and "that is to be considered the nearest way of access which a person making the best of his way from house to house would be likely to take: that is, using the footway where there was one, and where it was most convenient to use it, and the carriage-way, either where it could be most conveniently used, or where there was no footpath" (*l*). And "the nearest mode must be taken according to the existing state of the streets. If subsequently to the covenant, the covenantor took a public-house, the distance of which, by the then shortest way of access, would be greater than that agreed upon from the one he sold, and a new street were afterwards opened, whereby the distance, by the shortest way of access, became less than that mentioned in the covenant, the covenantor would thereupon incur a breach of covenant" (*m*).

As the crow
flies.

In construing covenants of this sort, however, much must depend on the precise language used. When the Legislature has used the expression "within twenty

(*i*) *Ward v. Byrne*, 5 M. & W. 518; *Hinde v. Gray*, 1 M. & G. 195; *Albopp v. Wheatcroft*, 15 Eq. 59. See *Leather Cloth Co. v. Lonsont*, 9 Eq. 345.

(*j*) *Rousillon v. Rousillon*, 14 Ch. D. 351.

(*k*) *Rousillon v. Rousillon*, 14 Ch. D. 351 (champagne trade not to be carried on for two or ten years according to certain circumstances); *Badische Anilin und Soda Fabrik v. Schott*, (1892) 3 Ch. 147 (manufacture and sale of aniline dyes, &c., for three years); *Robinson & Co. v. Heuer*, (1898) 2 Ch. 451.

(*l*) *Per Parké, J.*, in *Leigh v. Hind*, 9 B. & C. 775; see *Athyns v. Kinner*, 4 Ex. 776.

(*m*) *Per Littledale, J.*, in *Leigh v. Hind*, *ubi supra*.

miles," the Courts have laid down an arbitrary rule that the distance is to be measured in a straight line on a horizontal plane, or in popular language, "as the crow flies" (*n*). This rule has been applied by Wood, V.-C., in granting an injunction to restrain the breach of a covenant in restraint of trade (*o*), and, added the Vice-Chancellor, "if the parties mean the distance to be measured by roads and streets, they should say so."

In a subsequent case (*p*) in which the defendant assigned to the plaintiff the lease and goodwill of a public-house, and covenanted that if he should keep a public-house "within the distance of one half of a mile of the said premises" he would pay 500*l.* as liquidated damages, it was held by the Exchequer Chamber that the distance should be measured on a map, saying, "It is a very simple matter to take the ordnance map and with a pair of compasses measure the distance between any two points, and then by the scale ascertain what that distance is."

On the map.
Mouflet v.
Cole.

The parties to an agreement are not always careful to specify, or in any way limit, the nature of the trade or business which the covenantor binds himself not to carry on. But, as already pointed out, in construing these agreements the Court will apply the ordinary canons of construction which are applicable to contracts generally. The contract must be construed with reference to the business of the plaintiff which it was the object of the parties to protect. It is an ordinary canon of construction that the meaning of words in an agreement which, taken by themselves, are quite general may be confined to a particular subject matter with which the parties were dealing.

As to kind of
business.

So where the plaintiffs employed the defendant in their business of dairymen, and he agreed that neither during his service nor afterwards would he serve or

(*n*) *R. v. Suffron Walden*, 9 Q. B. 76; *Stokes v. Grissell*, 14 C. B. 678; *Lake v. Butler*, 5 E. & B. 92; *Jewel v. Stead*, 6 E. & B. 350.

(*o*) *Duignan v. Walker*, 1 Johns. 446.

(*p*) *Mouflet v. Cole*, L. R., 8 Exc. 32.

solicit or interfere in any way with any of the plaintiffs' customers in the said business, and it appeared that the plaintiffs' business of dairymen was carried on in Whitechapel and St. George's-in-the-East, the Court held that the agreement must be construed as relating to the business in which the defendant was employed, and would not relate to a business which might be set up by the plaintiffs in a different locality (*q*).

And where the defendant on entering into the service of a commission merchant in continental goods bound himself not to carry on for five years "any trade or business in the United Kingdom" in connection with any kind of continental goods dealt in by the plaintiff, the Court construed "any trade or business" as referring to the trade or business of commission merchant, and not including any kind of retail trade (*r*).

So, too, it was held that an agreement by a person not to "transact business" with any customers of his employer ought to be construed as confined to business similar to that of his employer (*s*).

What is
"carrying on"
a trade.

It is not very easy to define what acts would amount to "carrying on" a particular profession or trade. In the case of a profession it has been held (*t*) that acting as salaried assistant to a surgeon was a breach of a covenant in which the defendant bound himself not to set up or carry on the business or profession of a surgeon.

In the case of a trade it has been held by Malins, V.-C. (*u*), that a covenant by the vendor of a business not to "carry on or be concerned or interested in" the business of a tailor was broken by the vendor's engaging himself as a journeyman to his nephew, who carried on the trade of a tailor under the same name within the prescribed limits. In another case it was

(*q*) *Dubowski and Sons v. Goldstein*, (1896) 1 Q. B. 478; *Underwood and Son v. Barker*, 1899 1 Ch. 300.

(*r*) *Moenich v. Fensterer*, 61 L. J., Ch. 737; *Hood v. Jones*, 81 L. T. Rep. 169.

(*s*) *Mills v. Dunham*, (1891) 1 Ch. 576.

(*t*) *Palmer v. Mallet* 30 Ch. D. 411.

(*u*) *Newling v. Dobell*, 38 L. J., Ch. 111; see also *Jones v. Heavens*, 4 Ch. D. 636.

held by Lord Romilly, M. R. (*v*), that to act as clerk or assistant to a person carrying on the trade of a rag dealer was not a breach of a covenant by the defendant on the sale of his business not "to exercise or carry on the trade of a rag dealer either in his own name or that of any other person." But to accept a situation as buyer or manager in a general drapery establishment is a breach of an agreement not to "engage" in any business similar to that carried on by the plaintiff, which was that of a draper (*w*). Soliciting orders as servant for another does not amount to a breach of an agreement not to carry on a trade (*x*), nor does the mere lending of money to another without security to help him in carrying on business (*y*). Nor would the covenantor be guilty of a breach of a covenant not to "carry on or be in any way interested in" certain businesses, if his wife carried on the prohibited business, although in various ways he helped her in the business, unless the evidence showed that what was being done by the wife was a mere cloak or sham (*z*).

Whether the business carried on by the covenantor is of such a nature as to constitute a breach of the covenant depends in the first place on the exact terms of the contract. The business may be one of the very kind which the covenantee would be desirous of protecting himself against, but he must show that it comes within the words of the agreement. A covenant not to carry on the business of a restaurant similar to that carried on by R., an hotel-keeper with a restaurant on licensed premises connected with his hotel, was held (*a*) not to be broken by carrying on a restaurant at which hot meat was sold, but for which the defendant had not a licence for the sale of intoxicants, nor a victuallers' licence.

Nature of the business.

(*v*) *Allen v. Taylor*, 19 W. R. 556.

(*w*) *Watts v. Smith*, 62 L. T. Rep. 453.

(*x*) *Clark v. Watkins*, 9 Jur., N. S. 142.

(*y*) *Bird v. Lake*, 1 H. & M. 111, 338.

(*z*) *Smith v. Hancock*, (1894) 2 Ch. 377. *Seemle*, "interest" in such a covenant means pecuniary or proprietary interest.

(*a*) *Drew v. Guy*, (1894) 3 Ch. 25.

But an injunction was granted against a dealer in tea and groceries who was bound not to use his house as a coffee-house, to restrain him from supplying light refreshments to customers to be consumed on the premises (*b*).

Where the defendant on entering the service of an ale, porter, and spirit merchant bound himself not to travel for any porter, ale, or spirit merchant as agent, collector or otherwise, it was held (*c*) that to enter as traveller into the service of a brewer was not a breach.

Agreement
not binding on
executors.

An agreement by A. that he will not carry on a particular trade is not binding on his executors, so as to prevent their carrying on the prohibited trade (*d*): though, of course, the agreement might be made to extend to executors by apt words.

Action on
covenant by a
partner,

In a case in which the covenantees were partners, it was held that, after the dissolution of the partnership, one partner was able to sue by himself for an alleged breach of the covenant (*e*).

by an assignee.

And a purchaser of the covenantee's business to whom the covenant has been assigned, can sue for a breach (*f*).

There are numerous cases in the books in which the Courts have given decisions as to the reasonableness of the restraints imposed in particular instances. But as the question in every case of the kind here referred to is whether the restraint, having regard to all the circumstances of the case and the nature of the employment, is greater than is reasonably necessary for the protection of the person in whose favour it is imposed, it is not proposed to discuss the terms of the contracts and the circumstances of all these decisions.

(*b*) *Fitz v. Fleck*, (1893) 1 Ch. 77.

(*c*) *Jessellyn v. Pearson*, 4 L. R., 7 Ex. 127.

(*d*) *Cooke v. Colecroft*, 2 W. Bl. 856; 3 Wils. 380. *Scoble*, however, that the restraint in that case might have been void, as being in general restraint of trade.

(*e*) *Talbot v. Mallet*, 36 Ch. D. 411.

(*f*) *Bennett v. Inns*, 21 Beav. 397; *Barnes v. Georgy*, 35 Ch. D. 154; *Jacoby v. Whitmore*, 32 W. R. 18. In *Davies v. Davies*, 36 Ch. D. 359, the covenant was held upon its true construction to be a personal one, and within the rule of law that the benefit of personal covenants cannot be assigned. *Turner v. Jordan*, (1900) 2 Ch. 698.

A restriction thought unreasonable sixty or even thirty years ago might now be held to be reasonable. The whole business organization of society has been revolutionized by the use of railways, the post office, the telegraph and the telephone, so that a single firm may have a business extending over a vastly larger portion of the earth's surface than would have been dreamt of not very many years ago. And as businesses extend over a wider area, so wider restrictions will be considered reasonable for the protection of the persons carrying them on.

Together with the class of contracts already considered, whereby a servant may bind himself after leaving his employer's service not to carry on a business similar to that of his employer, may be classed those in which a clerk or other servant binds himself not to interfere with, or solicit the business of, those persons who are his employer's customers.

Contract not to solicit certain customers valid.

The same general principles of law are applicable to these contracts, and an agreement of this kind is valid if it goes no further than is necessary for the protection of the employer in his trade. The customers need not be named in a schedule (*g*).

Thus, where (*h*) an artied clerk to an attorney, in consideration of the attorney taking him as an artied clerk without any premium, covenanted that he would not during the articles, or at any time after their expiration, interfere with, or act as attorney or agent for, any person who had already been, or who should from time to time thereafter become or be the client, or correspondent in business, of the attorney, or any partner of his, or any person to whom he might sell his business, it was held that the attorney might recover in respect of breaches of covenant with regard to persons who had been his clients before and at the time of making the deed,

Nicholls v. Stretton.

(*g*) *Hunlocke v. Blacklowe*, 1 Wms. Saund. 156 ; *Rannie v. Irvine*, 7 M. & G. 969.

(*h*) *Nicholls v. Stretton*, 10 Q. B. 346.

and of persons who had been his clients whilst the clerk continued under articles.

In a somewhat similar covenant with a London solicitor, the word "clients" was held to include the country solicitors, for whom he acted as agent (i).

So, too, an injunction has been granted to restrain the defendant from serving or interfering with any persons who were customers of the plaintiff, a dairyman, at any time during the defendant's employment by him (j).

Mode of
securing
performance
of contract in
restraint of
trade.

The performance of a contract in restraint of trade is often secured by a bond or covenant not to do that which it is intended to prohibit, and, in the event of a breach of that stipulation, to pay a certain sum as a penalty or as liquidated damages.

The question whether the sum fixed by the parties is to be treated by the Court as a penalty or as liquidated damages is not decided by the name by which the parties have described it. A succession of judges have held that the use of the term "penalty" or "liquidated damages" is not conclusive, though perhaps where the parties themselves call the sum made payable a "penalty," the onus lies on those who seek to show that it is liquidated damages.

If in any particular case the Court should rule that a sum agreed to be paid is a penalty and not liquidated damages, evidence will be admissible to show what were the actual damages caused by the breach.

The earlier cases (k) were the subject of an elaborate exposition by Sir George Jessel, M. R. (l), and it seems

(i) *Reid v. Burrows*, (1892) 2 Ch. 415.

(j) *Burnes v. Geary*, 35 Ch. D. 154; *Imborsky and Sons v. Goldstein*, 1896 1 Q. B. 478. In the latter case are some observations as to the reasonableness of a covenant referring to persons becoming customers of the employer after the servant has left him.

(k) *Attkins v. Kinnier*, 4 Exc. 776; and see *Kemble v. Farren*, 6 Bing. 141; *Horner v. Flintoff*, 9 M. & W. 678; *Green v. Price*, 13 M. & W. 701; *Galsworthy v. Strat*, 1 Exc. 659; *Reynolds v. Bridge*, 6 E. & B. 528; *Mercer v. Irving*, E., B. & E. 563; *Betts v. Burch*, 28 L. J., Exc. 267; *Sparrow v. Paris*, 31 L. J., Exc. 137; *Magee v. Lovell*, L. R., 9 Q. P. 107; *Lea v. Whitaker*, L. R., 8 C. P. 76; *Re Newman*, 4 Ch. Div. 724; *General Credit Co. v. Glegg*, 22 Ch. D. 549.

(l) *Wallis v. Smith*, 21 Ch. D. 243.

sufficient here to mention the principal rules that have been laid down.

“ One rule which appears to be recognized in the cases,” says Lord Esher, M. R. (*m*), “ as a canon of construction with regard to agreements of this kind is that, where the parties to a contract have agreed that in case of one of the parties doing or omitting to do some one thing, he shall pay a specific sum to the other as damages, as a general rule such sum is to be regarded by the Court as liquidated damages and not a penalty,” and he mentions as an exception to that rule a case where the sum agreed to be paid is, with regard to the matter in respect of which it is to be paid, so large as to make the idea that it was intended to be payable by way of liquidated damages so absurd that the Court would be compelled to arrive at the conclusion that it was to be paid not as liquidated damages, but as a penalty.

Another important rule has reference to cases in which a fixed sum is made payable, not for the doing or omitting to do some one thing, but in order to secure the performance of several stipulations. If these stipulations are of varying degrees of importance so that the damages arising from breaches of them respectively will be of substantially varying amounts, the agreed sum is *prima facie* to be regarded as a penalty and not as liquidated damages (*n*).

Servants who have entered into binding contracts not to carry on certain businesses after leaving their masters' service, have frequently been restrained by injunction from committing breaches of their agreement. Examples of such cases are given below (*o*).

The terms of the contract may possibly show that the

(*m*) *Law v. Redditch Local Board*, (1892) 1 Q. B. 127.

(*n*) *Willson v. Love*, (1896) 1 Q. B. 626; *Strickland v. Williams*, (1899) 1 Q. B. 382.

(*o*) *Whitaker v. Howe*, 3 Beav. 383; *Nicholls v. Stretton*, 7 Beav. 42; *Harms v. Parsons*, 32 Beav. 328; *Rogers v. Drury*, 57 L. J., Ch. 504; *Jones v. Heavens*, 4 Ch. D. 636; *Howard v. Woodward*, 34 L. J., Ch. 47; *May v. O'Neill*, 44 L. J., Ch. 660.

intention of the parties was that the servant might be at liberty to carry on the prohibited business after leaving his master's service upon payment of a fixed sum as a penalty. But in the case of an ordinary bond it would be no answer to a claim for an injunction that the defendant was willing to pay the penalty (*p*), and in the case of contracts such as are now under consideration, it will be a question for the Court whether there can be gathered from the contract an agreement by the servant that he will not carry on the prohibited business. If the penalty is agreed to be recoverable "as liquidated damages," that will go to show such an agreement by the servant, because the use of the word "damages" implies a breach of an agreement (*q*). If an agreement not to carry on the trade can be gathered from the contract, then the Court will probably enforce it by injunction (*r*), though the penalty be payable as liquidated damages.

But a master is not entitled to an injunction in addition to the amount agreed on as liquidated damages (*s*). Injunctions have also been granted to restrain defendants from committing breaches of agreements not to carry on certain trades after leaving the plaintiff's service, where the defendants were infants at the time they made the agreements (*t*).

Persons who enter into contracts of service occasionally bind themselves at the same time not to do work for any one but their master so long as they remain in their master's service.

Contract on
sale of business

So where a man who for many years had carried on

(*p*) *French v. Macale*, 2 Dr. & W. 269.

(*q*) *National Provincial Bank of England v. Marshall*, 40 Ch. D. 112. But an agreement may be extracted from the condition of the bond for the payment of a fixed penalty without any agreement as to the penalty being liquidated damages, *London and Yorkshire Bank v. Pratt*, 56 L. J., Ch. 987.

(*r*) *Howard v. Woodward*, 34 L. J., Ch. 47; *Girvelly v. Baynard*, 18 Eq. 518; *London and Yorkshire Bank v. Pratt*, 56 L. J., Ch. 987; *National Provincial Bank of England v. Marshall*, 40 Ch. D. 112; *Jones v. Heavens*, 4 Ch. Div. 636.

(*s*) *Saunter v. Ferguson*, 1 Mac. & G. 286; *Carnes v. Nishutt*, 7 H. & N. 158, 778; *Gent v. Harrison*, 69 L. T. Rep. 307.

(*t*) *Cornwall v. Hawkins*, 41 L. J., Ch. 435; *Evans v. Ware*, (1892) 3 Ch. 502; see *Middleton v. Brown*, 47 L. J., Ch. 411.

the business of a carrier (*u*) sold and assigned the goodwill of his business to the defendants, and covenanted with them that he would not at any time from thenceforth during the term of his natural life, either by or for himself, or for or with any other person whomsoever in trust for him, or to or for his benefit, set up, exercise, or in any sort or manner howsoever use or follow the trade or business of a carrier except as thereafter was excepted, and that he would from thenceforth during his life well and faithfully serve the defendants as an assistant in the said trade or business of a carrier, &c., and the defendants covenanted to pay him certain weekly sums: it was held that the agreement was not void as being in general restraint of trade.

to serve the purchaser for life not illegal.

But where a defendant entered the service of the plaintiffs for a term of ten years from August, 1897, terminable on three months' notice, and agreed for that time not to engage himself directly or indirectly in any other business, or transact any business with any other person or persons than the plaintiffs, and in 1898 he left the plaintiff's service, it was held that the negative stipulations on his part were unreasonable, and ought not to be enforced by injunction so as to compel him for the remaining nine years to abstain wholly from business (*r*).

The remedy by injunction is often a more complete and effectual remedy than an action for the penalty agreed upon. And it seems that the jurisdiction of Courts of equity to restrain by injunction an act which a defendant is by contract or duty bound to abstain from, is not confined to cases in which those Courts have jurisdiction over the acts of a *plaintiff*: the want of

Want of mutuality no objection.

(*u*) *Wallis v. Day*, 2 M. & W. 273. As to how far agreements made by workmen to work for a particular master for a long period at certain wages, and *no one else*, are illegal, as being in restraint of trade, *where there is no corresponding objection on the part of the master to find work*, see *Pilkington v. Scott*, 15 M. & W. 657; *Hartley v. Cummings*, 5 C. B. 247; *R. v. Welch*, 2 E. & B. 357; *ante*, p. 75; see also *Robinson & Co. v. Heuer*, (1898) 2 Ch. 451.

(*r*) *Ehrman v. Bartholomew*, (1898) 1 Ch. 671.

mutuality in the contract affords no objection to the exercise of the jurisdiction (*w*).

Injunction.

But though agreements of this sort in which a servant has bound himself to serve his master and no one else during a certain period may sometimes be enforced by injunction, the Court will act very cautiously before granting such a remedy.

Negative
covenants
enforced.

It is a general rule of the Court not to grant decrees for the specific performance of agreements that are strictly personal in their nature, such as agreements of hiring and service (*x*), but in certain cases negative covenants can be enforced by means of an injunction.

The leading case (*y*) on this subject is one in which a singer agreed that for three months she would sing at the plaintiff's theatre, and that during that time she would not sing for anybody else without the plaintiff's permission. There Lord St. Leonards granted an injunction to restrain the defendant from singing elsewhere than at the plaintiff's theatre, though he could not enforce specific performance of the entire contract.

In one case (*z*) an injunction was granted by Malins, V.-C., although there was no negative covenant, but in a subsequent case (*a*) the Court of Appeal have held that the Vice-Chancellor in granting the injunction proceeded upon a mistaken view of the decision in *Lumley v. Wagner*.

The decision in *Lumley v. Wagner* has been followed, but it is an anomaly which is not to be extended (*a*). In a case (*b*) where the defendant agreed to act as a

(*w*) *Dietrichsen v. Cabburn*, 2 Phill. 52; *Morris v. Coleman*, 18 Ves. 437; *Stocker v. Wedderburn*, 3 Kay & J. 393; but see *Hells v. Croll*, 1 De G., M. & G. 326; *Blocket v. Bates*, 35 L. J., Ch. 321; *Donnell v. Bennett*, 22 Ch. Div. 835.

(*x*) *Rugby v. Connel*, 14 Ch. D. 482; per Cotton, L. J., in *Rambridge v. Smither*, 41 Ch. D. 462; *Whitwood Chemical Co. v. Hardman*, (1891) 2 Ch. 416.

✓ (*y*) *Lumley v. Wagner*, 1 D., M. & G. 604; 24 L. J., Ch. 898. See *Ogden v. Foskick*, 32 L. J., Ch. 73, and *Peto v. Brighton, Uckfield and Tunbridge Wells Railway Co.*, 32 L. J., Ch. 677.

(*z*) *Montague v. Flockton*, 16 Eq. 189; 42 L. J., Ch. 677. In *Webster v. Inlton*, 3 Jur., N. S. 432, an injunction was also granted, but *ex parte*.

(*a*) *Whitwood Chemical Co. v. Hardman*, (1891) 2 Ch. 416.

(*b*) *Grimston v. Cunningham*, (1894) 1 Q. B. 125; see also *Robinson v. Henev*, (1898) 2 Ch. 451; and *De Mattos v. Gibson*, 4 De G. & J. 276.

member of the plaintiff's theatrical company for twenty-five weeks, one of the terms of his employment being that he should not act, sing or appear publicly at any other theatre without special permission of the management, the Divisional Court granted an injunction restraining the defendant from acting elsewhere than in the plaintiff's theatre.

In these cases, therefore, an injunction will only be granted to enforce a negative covenant, and perhaps only a covenant not to do some specific thing. Such a covenant may be implied from positive covenants if the Court can make out clearly and definitely any such negative agreement (*c*). Where a manager agreed to give "the whole of his time to the company's business" the Court (*d*) refused to imply a negative agreement which would enable them to grant an injunction to restrain him from giving part of his time to a rival company; and in another case (*e*) it was held that a stipulation to "act exclusively for" the plaintiffs was not definite enough for the purpose of implying a negative stipulation not to act for any one else.

What are
negative
covenants.

On the other hand a covenant negative in form may be positive in substance, and therefore one to enforce which an injunction will not be granted (*f*).

When an injunction is granted to enforce a negative term of a contract, it will be conditional on the performance by the plaintiff of his part of the agreement, and will be liable to be dissolved if he fails to perform it (*g*).

(*c*) *Wolverhampton and Walsall Railway Co. v. London and North Western Railway Co.*, 16 Eq. 433; *Catt v. Tourle*, L. Rep., 4 Ch. 654; *Metropolitan Electric Supply Co. v. Ginder*, (1901) 2 Ch. 799.

(*d*) *Whitwood Chemical Co. v. Hardman*, (1891) 2 Ch. 416.

(*e*) *Mutual Reserve Fund Life Association v. New York Life Insurance Co.*, 75 L. T. Rep. 528.

✓ (*f*) *Davis v. Foreman*, (1894) 3 Ch. 654.

(*g*) *Stocker v. Wedderburn*, 3 K. & J. 393; *Fechter v. Montgomery*, 33 Beav. 22.

CHAPTER III.

THE DUTIES OF THE SERVANT TO THE MASTER, AND THE
RIGHTS AND REMEDIES OF THE MASTER TO ENFORCE
THE PERFORMANCE OF THEM.

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1. AS BETWEEN MASTER AND SERVANT.

It is not proposed in the present work to enter upon a discussion of the *moral* duties of a servant towards his master; nor to discuss the propriety of employing the criminal law to the enforcement of rights arising out of a civil contract of hiring and service. Neither is it proposed, *in this chapter*, to consider the cases in which the *criminal* law prescribes punishment for misconduct on the part of a servant. That part of the subject will be treated of hereafter. This chapter will be confined to a consideration of the duties which are *civilly* binding upon a servant, and the civil remedies open to a master who has sustained injury by the breach of such duties.

DUTIES OF SERVANT TO MASTER, AND ACTION BY MASTER
AGAINST SERVANT FOR BREACH THEREOF.

In the first place it is clearly the duty of a person who has engaged to enter into the service of another, in any capacity, to fulfil his engagement by entering into such service: and if he fail to do so, without any good reason, he will be liable to an action for such breach of contract (*a*). As where a man agreed to go out to Australia in the plaintiff's ship, as surgeon, but afterwards refused to go; the plaintiff recovered damages in an action against him (*b*). Since, however, a master would rarely deem it worth his while to bring an action against a servant who had engaged to enter his service for refusing to do so, except, perhaps, in the case of actors and singers (*c*), and superior servants or skilled workmen, it will be sufficient, upon that subject, to observe that, to enable a master to sustain such an action, it would, of course, be necessary for him to prove a *legally binding* contract of hiring and service (*d*).

Action by master against servant; for not entering his service: *Richards v. Hayward*.

So, also, it is equally clearly the duty of every person who has *entered into* the service of another to continue in such service during the whole time that he has contracted for, and if he depart without any good reason he will be liable to an action for so doing. Where, therefore, B. covenanted to serve A. as a journeyman for five years, and to work at the usual hours daily under a penalty of 100*l.*, but before the expiration of the five years departed out of the service, A. recovered against him in an action of debt the full sum of 100*l.* and costs (*e*). In this case,

For leaving it too soon.

Bird v. Randall.

(*a*) *Cotes v. Sadler*, 2 Keb. 16.

(*b*) *Richards v. Hayward*, 2 M. & G. 574.

(*c*) *Astley v. Weldon*, 2 B. & P. 346; *Kemble v. Farren*, 6 Bing. 141; *Lumley v. Wagner*, 1 De G., M. & G. 604.

(*d*) See the preceding chapter as to the requisites of the Contract.

(*e*) *Bird v. Randall*, 3 Burr. 1345 and see *Huttman v. Boulnois*, 2 C. & P. 513; *Lees v. Whitcomb*, 5 Bing. 34; *Messiter v. Rose*, 13 C. B. 162. In *Bowes v. Press*, (1894) 1 Q. B. 202, coal miners who refused to go down in the "cage" at the same time as non-unionists were held to have been guilty of such a breach of contract as entitled the plaintiff to substantial damages.

also, it would be equally necessary to prove a legally binding contract of hiring and service.

Permanent
illness an
answer.

But in either of the above cases, if the servant were prevented by the act of God, *e.g.*, permanent illness, from performing his contract, that would be a good defence to an action by the master (*f*).

Temporary
illness of a
musician or
specially
skilled servant.

Upon similar principles it has been held (*g*) that a contract by a musician to play at a concert at a fixed time, being a contract dependent on the personal skill of the artist, is subject to an implied condition that if the musician be without his own default disabled by temporary illness he shall be excused.

Domestic
servants.

And in the case of domestic servants, they have a right by custom to leave their situations at any time on payment of a calendar month's wages in advance, just as a master may discharge them in a similar manner.

Not enforce-
able by decree
for specific
performance.

The Court will not grant a decree against a servant for specific performance of a contract of personal service (*h*), and it is only in the case of a negative covenant that it will grant an injunction against a servant to enforce such a contract (*i*).

Duties of
servant during
service,
generally.

The duties of a servant to his master, *during his service*, must, generally speaking, depend, in a great measure, upon the nature of his employment, his master's business, and the contract he has entered into with his master (*k*).

(*f*) *Boast v. Firth*, L. R., 4 C. P. 1.

(*g*) *Robinson v. Darison*, L. R., 6 Ex. 269. See this case as to giving notice of illness.

(*h*) *Stocker v. Brocklebank*, 20 L. J., Ch. 408, *post*, p. 155; *Lumley v. Wagner*, 1 De G., M. & G. 604; 5 De G. & S. 485; *Johnson v. Shrewsbury and Birmingham Railway Co.*, 3 De G., M. & G. 914; *Gye v. Graziari*, V. C. Wood, E. T. 1859; *Channon v. Saunbury*, 30 L. J., Ch. 409; *Wolverhampton and Walsall Railway Co. v. L. & N. W. Railway Co.*, L. R. 16 Eq. 433; *Rigby v. Connol*, 14 Ch. D. 482. See *Dannell v. Bennett*, 22 Ch. Div. 835.

(*i*) *Lumley v. Wagner*, 1 De G., M. & G. 604; 5 De G. & S. 485.

(*k*) See *Chartered Bank of India v. Rich*, 32 L. J., Q. B. 300, which was an action against a bank manager for breaches of duty. In that case the plaintiffs dismissed the defendant from his post as manager of a branch bank in India, and their manager in England wrote letters to an agent in India, directing him to make inquiries as to the alleged breaches of duty on the part of the defendant and received answers; it was held that the defendant was not entitled to inspect any of the letters or answers. See also as to this point, *Wolley v. Pole*, 32 L. J., C. P. 263.

There are, however, many duties which are implied by law from the relationship of master and servant, and are binding upon all servants. Thus, every servant is bound to obey all the lawful orders of his master (*l*), and to be honest (*m*), and diligent (*n*), in his master's business, and not to abuse his confidence in matters appertaining to his service (*o*). "Further, as in this contract, the condition of the master is more advantageous than that of the servant, the servant ought to respect his master according to his station in the world" (*p*).

Where a servant or agent is employed to do certain work for remuneration, it is an implied condition in the contract of service that he will faithfully and truly discharge his duty towards his employer. "There can be no question," said Bowen, L. J. (*q*), "that an agent employed by a principal or master to do business with another, who, unknown to that principal or master, takes from that other person a profit arising out of the business which he is employed to transact, is doing a wrongful act inconsistent with his duty towards his master, and the continuance of confidence between them. He does the wrongful act whether such profit be given him in return for services which he actually performs for the third party, or whether it be given him for his supposed influence, or whether it be given him on any other ground at all; if it is a profit which arises out of the transaction, it belongs to his master, and the agent or

Servant receiving commissions and secret profits

(*l*) *Post*, p. 109.

(*m*) *Post*, p. 111. As to the rights of a master to recover damages for conversion from a person to whom his servant has wrongfully sold his goods, after he has accepted money from his servant in full settlement of all claims against him, see *Rice v. Reed*, (1900) 1 Q. B. 54.

(*n*) *Post*, p. 113.

(*o*) *Robb v. Green*, (1895) 2 Q. B. 1.

(*p*) Puff. de Off. Hom. ac Civ. lib. 2, cap. 4, s. 2; and see *per* Lord Kenyon in *Limland v. Stephens*, 3 Esp. 269.

(*q*) *Boston Deep Sea Fishing and Ice Co. v. Ansell*, 39 Ch. D. 339; so in *Williamson v. Hine*, (1891) 1 Ch. 390, it was held that a broker, who was appointed managing owner of a ship, was not entitled to keep a commission on obtaining charters for the ship, as the obtaining of charters for the ship was part of his duty as managing owner. See also *Morison v. Thompson*, L. R., 9 Q. B. 480; *Eden v. Ridsdale's Railway Lamp, &c. Co.*, 23 Q. B. D. 368.

servant has no right to take it, or keep it, or bargain for it, or to receive it without bargain, unless his master knows it." If a servant make such a bargain to be paid a commission, the bargain is corrupt, and he cannot sue upon it to recover the commission (*r*). Where a paid agent, who has been bribed so to do, induces his principal to enter into a contract with the person who has paid the bribe, and the contract is disadvantageous to the principal, the principal may recover the amount of the bribe from his agent, and in addition may sue the briber for damages for the loss sustained by him in entering into the contract (*s*).

The claim by the principal against his agent in such a case is simply a claim by a creditor against a debtor, not by a *cestui que trust* against his trustee (*t*).

If the money has not been paid over by the briber to the principal's agent, the principal may sue the briber for it, and it is no answer by the defendant to say that he saw no harm in what he had done. But if the bribe or commission has been paid over to the agent, the principal becomes immediately entitled to it, as to a gift, whether he elect to adopt or rescind the contract (*u*). The principal, when he finds out the bargain has been corruptly made, may, if he like, rescind the contract he has entered into, before it has been carried out (*r*).

Servant is
liable for gross
negligence ;

but not for
accidents ;

Every servant, moreover, is bound to take due and proper care of his master's property intrusted to him ; and if guilty of *gross negligence*, whereby his master's property is injured, he will be liable to an action (*y*) ; but he is not obliged to preserve his master's property at all

(*r*) *Harrington v. Victoria Graving Dock*, 3 Q. B. D. 549.

(*s*) *Mayor, &c. of Salford v. Lever*, (1891) 1 Q. B. 168.

(*t*) *Lister v. Stubbs*, 15 Ch. D. 1.

(*u*) *Panama Telegraph Co. v. India Rubber Telegraph Works Co.*, L. R., 10 Ch. 515 ; *Grant v. Gold Exploration and Development Syndicate*, (1900) 1 Q. B. 233.

(*r*) *Panama Telegraph Co. v. India Rubber Telegraph Works Co.*, L. R., 10 Ch. 515 ; *Smith v. Sorby*, 3 Q. B. D. 552, note ; *Whaley Bridge Printing Co. v. Green*, 5 Q. B. D. 109.

(*y*) *Countess of Salop v. Crompton*, Cro. Eliz. 777, 781.

adventures (z). In an old case (a), therefore, where a carrier brought an action against his servant for losing goods, it was held that the action would not lie, Holt, C. J., saying, that "There ought to be a negligence shown in the servant to make him liable to this action, for this amounts only to a bailment of goods, where, if thieves break in and steal them, he shall not answer it." And a servant intrusted with money would not be liable to his master if robbed of it (b). *Savage v. Walthev*;
or robbery.

But if guilty of fraud or misfeasance, he would be liable to an action at the suit of his master. Thus, where (c) the plaintiff covenanted with J. S. not to import certain goods, and the defendant, being the plaintiff's servant, and knowing thereof, imported the said goods, whereby the plaintiff broke his covenant, and was sued by J. S., who recovered damages against him, it was held that the servant was bound to indemnify his master, although it was not alleged that the servant imported the goods *with intent* to damnify his master. And where (d) a merchant, on going abroad, trusted his servant to receive in his absence all goods that should arrive for him, and to pay the duties upon them, but the servant landed some without paying the duties, whereby they became forfeited to, and were seized on behalf of, the Queen, it was held that the merchant might maintain an action on the case against the servant for this malfeasance. And so it is said, that if a servant that drives his master's cart, by his negligence suffers the cattle to perish, an action upon the case lies against him (e). And if a man deliver a horse to his servant to go to market, or a bag of money to carry to London, which he neglects to do, the master may have an action of account or Servant also
liable for
fraud and
misfeasance.
Hussy v. Pacy.

Lewson v. Kirk.

(z) Bac. Abr. "Master and Servant" (M. 1); *Nickson v. Brohan*, 10 Mod. 109.

(a) *Savage v. Walthev*, 11 Mod. 135.

(b) *Walker v. British Guarantee Association*, 18 Q. B. 277.

(c) *Hussy v. Pacy*, 1 Lev. 188.

(d) *Lewson v. Kirk*, Cro. Jac. 265.

(e) 7 Hen. 4, 14; Bac. Abr. "Master and Servant" (M.).

Servant inducing apprentice to leave his master.

detainer against him (*f*). And a servant who induces an apprentice to leave his master's service is liable to an action for so doing (*g*).

Use by servant of information acquired during service.

Unless it be contrary to some express term of his employment (*h*), a servant, after leaving service, may lawfully set up a business of the same nature as that carried on by his late master, and in the same locality; and, provided that he acts fairly, there is no reason why he should not deal with persons who were customers of his late master (*i*), and so compete with him in business. But it is an implied term of the contract between a master and his servant that confidential information received by the servant to advance his master's business, and materials obtained by him on his master's behalf, in the course of his service, shall not be used by him, after the termination of his service, in such a way as to prejudice his master's interests (*k*).

So where (*l*) the Court appointed as receiver and manager of a business a former clerk of the firm, and the clerk sent a circular to the customers of the firm soliciting their custom for his own business, and refused to give an undertaking not to repeat the offence, he was committed to prison for contempt of Court.

And where (*m*) canvassers had been employed to obtain advertisements for a directory, an injunction was granted to restrain them from using for the purposes of any other publication the materials which, while in the plaintiff's employment, they had obtained for the purpose of his publication.

So, too, where (*n*) the defendant, while employed by the

(*f*) 21 Hen. 4, 14; Bac. Abr. "Master and Servant" (M).

(*g*) *Turner v. Robinson*, 5 B. & Ad. 789; and see Grot. lib. 3, cap. 7, sect. vi. 5.

(*h*) *Ante*, p. 77.

(*i*) *Re Irish*, 40 Ch. D. 49; *Helmore v. Smith* (2), 35 Ch. D. 449.

(*l*) *Morrison v. Mount*, 9 Hare, 241.

(*l*) *Helmore v. Smith* (2), 35 Ch. D. 449.

(*m*) *Lamb v. Evans*, [1893] 1 Ch. 218, in which some doubt was thrown upon the decision of Sir George Jessel, M. R., in *Reuter's Telegram Co. v. Byron*, 43 L. J., Ch. 661.

(*n*) *Robb v. Green*, [1895] 2 Q. B. 1. In this case the earlier decisions are

plaintiff as manager of his business, copied a list of names and addresses of his master's customers with the intention of using it for the purpose of soliciting orders from them after leaving the plaintiff's service and setting up business on his own account, it was held by Hawkins, J., that this was a breach of an implied term of the contract of service, and that the defendant was liable in damages for any loss caused to the plaintiff by reason of such breach.

And Kekewich, J., granted an injunction restraining the defendant from publishing or communicating to any person a table of dimensions of engines made by the plaintiff, which table he had compiled, without the plaintiff's knowledge, during his apprenticeship to the plaintiff (o).

A servant is also liable to an action at the suit of his master, where a third person has brought an action, and recovered damages against the master, for injuries sustained in consequence of the servant's negligence or misconduct; and in such action against the servant, the verdict against the master, in the action brought against him, is evidence as to the *quantum* of damages, though not as to the fact of the injury (p). Upon this ground, formerly (q), the servant through whose negligence or misconduct an injury was caused was inadmissible as a witness for his master, in an action brought against him for such injury, without a release (r).

Liability of servant to indemnify master from consequences of his negligence.

Upon this principle the Act for regulating Hackney

6 & 7 Vict. c. 86, s. 28.

discussed, and dissent expressed from a decision of Lord Kenyon in *Nichol v. Martyn*, 2 Esp. 732. In *Louis v. Smellie*, 73 L. T. Rep. 226, the plaintiff obtained damages from the defendant, formerly his servant, and also an injunction restraining him from using any copies or extracts made from the plaintiff's register of agents, or any memorandum made by the defendant when in the plaintiff's employ relating to any person named in the book.

(o) *Merryweather v. Moore*, (1892) 2 Ch. 518.

(p) *Green v. The New River Co.*, 4 T. R. 589; *Pritchard v. Hitchcock*, 6 M. & G. 151.

(q) See now 3 & 4 Will. 4, c. 42, and *Yeomans v. Legh*, 2 M. & W. 419.

(r) *Green v. The New River Co.*, *ubi supra*; *Whitmore v. Waterhouse*, 4 C. & P. 383; and cases collected, 1 Phill. on Evid. 101; 2 Smith's L. C. 52, 2nd edit., note to *Bent v. Baker*.

and Stage Carriages in and near London (s), which empowers justices to award compensation not exceeding 10*l.* to a person aggrieved by furious driving, &c., and to order the proprietor of the carriage, the driver or conductor of which has caused the injury, to pay the compensation, enables the proprietor to recover the same in a summary way before the justice from the driver or conductor through whose default such sum shall have been paid.

Colburn v.
Patmore.

But in one case a very strong opinion was expressed (though it became unnecessary to *decide* the question), that the proprietor of a newspaper, who has been convicted upon a criminal information and fined, for the publication of a libel in the paper inserted, without his knowledge or consent, by the editor, cannot recover, in action against the editor, the damages he has sustained by such conviction (t).

Servant's duty
to account to
master.

A servant or other agent who has received money from or on account of his master or principal is generally speaking accountable to him, and him only. The duty of an accounting party is to be constantly ready with his accounts, and if the accounts show that he has money which he ought to pay over, he ought also to be constantly ready to pay. It has therefore been held (u) that an agent who was bound to pay over money to his principal when requested so to do, was chargeable in an action for money had and received with interest on the amount so received from the date of the refusal to pay it over.

Servant can-
not set up
jus tertii.

In a claim by a master against his servant for money

(s) 6 & 7 Vict. c. 86, s. 28, repealed as to watermen by 37 & 38 Vict. c. 96.

(t) *Colburn v. Patmore*, 1 Cr., M. & R. 73; see the note at the end of the case. And see also *Campbell v. Campbell*, 7 Cl. & Fin. 181; 1 Smith's L. C. note to *Lampfeigh v. Brathwaite*; *Shackell v. Rozier*, 2 Bing. N. C. 634. The question, however, could hardly arise since the statute 6 & 7 Vict. c. 96, s. 7; *vide post*, Chap. V.

(u) *Barsant v. Blaine Macdonald & Co.*, 56 L. J., Q. B. 510, following *Pease v. Green*, 1 Jac. & W. 135. As to how far a servant, under a duty to account to his master, can rely on the Statute of Limitations, see *Teed v. Beere*, 28 L. J., Ch. 782, and other cases cited *post*, Chap. VIII.

or goods, the servant is generally considered to be estopped from setting up the title of any other person, or asserting the *jus tertii*, as it is sometimes expressed, in opposition to the title of his master or principal (*r*).

Upon this principle where a farm bailiff, having (wrongfully after he was discharged) received payment for some corn of his master's, paid the money into his own private account at his bankers, it was held that it was not competent to the bankers to set up the master's right to the money, as they were accountable to their customer (*x*).

Tassell v. Cooper.

And so in equity, an agent to receive for the use of his principal cannot, by mere notice, be converted into a trustee for a third person (*y*); and an agent employed by a trustee is *primâ facie* accountable to him only, and not to the *cestui que trust* (*z*). Upon similar principles a sub-agent is accountable to the superior agent, by whom he was employed, and not to the principal (*a*).

The above-mentioned estoppel, however, does not operate where the title of the master or principal accrued fraudulently or tortiously (*b*), or under a defeasible contract, which has actually been defeated (*c*). And in such cases the servant or agent has been allowed to set up the *jus tertii* in opposition to the claim of his master or principal (*d*).

Except in certain cases.

(*v*) *Dixon v. Hamond*, 2 B. & Ald. 310; *Roberts v. Ogilby*, 9 Price, 269; *Gosling v. Birnie*, 7 Bing. 339; *White v. Bartlett*, 9 Bing. 378; *Holl v. Griffin*, 10 Bing. 246; *Sims v. Britain*, 4 B. & Ad. 375; *Kieran v. Saudars*, 6 A. & E. 515; *Ireland v. Thomson*, 4 C. B. 149, 171.

(*x*) *Tassell v. Cooper*, 9 C. B. 509.

(*y*) *Nicholson v. Knowles*, 5 Madd. 47; see *Crawshay v. Thornton*, 2 Myl. & Cr. 1; *Stuart v. Welch*, 4 Myl. & Cr. 323; *Fyler v. Fyler*, 3 Beav. 558.

(*z*) *Myler v. Fitzpatrick*, 6 Madd. 360. See also *Hunt v. Maniere*, 34 L. J., Ch. 142.

(*a*) *Cartwright v. Hately*, 1 Ves. 292; *Pinto v. Santos*, 3 Taunt. 447; *Sims v. Britain*, 4 B. & Ad. 375; *Baron v. Husband*, 4 B. & Ad. 611; *Ireland v. Thomson*, 4 C. B. 149, 171; *Cobb v. Becke*, 6 Q. B. 930; *Robbins v. Fennell*, 11 Q. B. 248.

(*b*) *Hardman v. Willcock*, 9 Bing. 382, note; *Cheeseman v. Exall*, 6 Exc. 341.

(*c*) *Murray v. Mann*, 2 Exc. 538.

(*d*) Where he can set up the *jus tertii*, he must, of course, show a complete title in such third person, *Crosskey v. Mills*, 1 Cr., M. & R. 298. If it has not been asserted, or has been abandoned, by such third person, the servant or agent cannot rely upon it, *Betteley v. Reed*, 4 Q. B. 511.

The question as to how far a servant may rely upon his accountability to his master, and the maxim *Respondet superior*, in opposition to the claims of third parties, will be treated of in a subsequent chapter (*e*). The cases, however, in which *that* question arose, must be carefully distinguished from those in which the action is brought by the master; as a third person, who has a good title to goods, may, in general, recover them from the servant, notwithstanding the bailment (*f*).

Presumption of payment by servant to master from course of dealing.

Where a servant is in the habit of receiving money for the use of his master, and, by the established course of dealing, pays it over to his master from time to time, without any written vouchers passing between them, then the presumption of law is, that all sums so received by the servant are regularly paid over to the master. Therefore, where there has been such a course of dealing, in an action by the master against the servant for money had and received, it is not enough for the master to prove that sums have been received by the servant to his use; but the *onus* lies upon *him* to prove by positive evidence that the servant has not duly accounted with him (*g*).

CHASTISEMENT OF SERVANT.

Master has no power to chastise servant of full age for breach of duty.

It is conceived, notwithstanding passages which may be found in the books *apparently* to the contrary (*h*), that no master (*i*) would be justified by the law of England

(*e*) *Post*, Chap. VI.

(*f*) *Ogle v. Atkinson*, 5 Taunt. 759; see *Cheeseman v. Exall*, 6 Exc. 341; *Thorne v. Tilbury*, 3 H. & N. 531.

(*g*) *Evans v. Birch*, 3 Camph. 10; *Atlee v. Backhouse*, 3 M. & W. 633.

(*h*) 1 Hawkins, P. C. lib. i. cap. 29, sect. 5, cap. 60, sect. 23; 3 Salk. 47; Burn's Justice, "Servant," sect. 9; Bac. Abr. "Master and Servant" (N.); Hale's Hist. P. C. 454. The cases of Villenage, 9 Rep. 76 a; *Anon.*, 2 Mod. 167, would not apply to a hired servant. See Hob. 99; F. N. B. 168, P.; and Puff. de Off. Hom. ac Civ. lib. 2, cap. 4, sect. 2; and M. Barbeyrac's Note to Puff. Law of Nature and Nations, b. 6, c. 3, s. 1, note 1; and Grot. lib. 2, cap. 26, s. 3.

(*i*) The master of a ship, however, has, by law, authority, in case of disobedience or disorderly conduct, to correct the mariners in a reasonable manner. See Abbott on Shipping, Part II., Chap. IV., s. 4; *The Agincourt*, 1 Hagg. 271; *Watson v. Christie*, 2 B. & P. 214; *Murray v. Montrie*, 6 C. & P. 471; *R. v. Leggett*, 8 C. & P. 191; *Edward v. Trevellick*, 4 E. & B. 59; as to

even in moderately chastising (*k*) a hired servant of full age for dereliction of duty; and that where the books speak of a master being justified in moderately chastising his servant or apprentice, they must be taken to apply only to the case of a servant or apprentice *under age* (*l*); and the only civil (*m*) remedies a master has for idleness, disobedience or other dereliction of duty, or breach of contract on the part of a servant are, to bring an action against him (*n*), or, as Puffendorf expressed it (*o*), “to expel the lazy drone from his family, and leave him to his own beggarly condition” (*p*). The circumstances which justify the discharge of a servant will also sometimes justify the non-payment of his wages.

DISCHARGE OF SERVANT.

It is difficult to lay down any general rule as to what causes will justify (*q*) the discharge of a servant (*r*), which

What causes will justify the discharge of a servant.

Passengers, *Noden v. Johnson*, 16 Q. B. 218; steward suspected of felony, *Broughton v. Jackson*, 18 Q. B. 378. The case of mariners on board ship seems to be exceptional, but it is not confined to cases where the vessel is at sea, *Lamb v. Burnett*, 1 Cr. & J. 291.

(*k*) See *Latter v. Braddell*, 50 L. J., C. L. 166, 448, in which a housemaid, who was alleged to be pregnant, brought an action of assault against her master and mistress for causing her to be examined by a doctor, but failed from not proving non-consent. Her action against the doctor also failed.

(*l*) 1 Bl. Comm. 428; 2 Kent's Comm. 211; F. N. B. 168, L. 2, where it is said that battery of a servant is a good cause of departure. In pleading a justification of *moderate correction* of an apprentice, it was not usual to state that he was under age, 3 Ch. Pl. 321.

(*m*) See *post*, Chap. VIII., as to criminal proceedings.

(*n*) F. N. B. 167; Dalt. Just. c. 58.

(*o*) Puff. on the Law of Nature and Nations, b. 6, c. 3, s. 4.

(*p*) In the present day no one would attempt to justify beating a servant for dereliction of duty, but Macaulay, Hist. Eng. vol. i. p. 424, says that in the 17th century masters well born and bred were in the habit of beating their servants.

(*q*) If there be any circumstance in existence at the time of the master's dismissal of the servant which would have justified him in so acting, it is immaterial whether it was alleged by the master or even known to him at the time. If an action for wrongful dismissal be afterwards brought against him, he may justify the dismissal by proof of any facts that would have supported it at the time, *Baillie v. Kell*, 4 Bing. N. C. 638; *Ridgway v. Hungerford Market Co.*, 3 A. & E. 171; *Spotswood v. Barrow*, 5 Ex. 110, in which the Court did not follow *Cussons v. Skinner*, 11 M. & W. 161; *Cowan v. Milbourn*, L. R., 2 Ex. 230; and see the directions to the jury given by Alderson, B., in *Willetts v. Green*, 3 Carr. & K. 59.

(*r*) In an ordinary apprenticeship deed the covenants by the master are independent covenants, the performance of which does not depend upon the performance by the apprentice on his part of the obligations imposed on him

shall comprise and be applicable to *all* cases; since whether or not a servant in any particular case was rightfully discharged, must of course often depend upon the nature of the services which he was engaged to perform, and the terms of his engagement (s). It would seem, however, that the cause of discharge must be somehow connected with the duties of the service, *e.g.*, a clerk could not be discharged because he could not drive; he might fairly say *non haec in fidera veni*. In fact the question in what case and upon what grounds an employer has the right to discharge a person employed by him has only been considered in modern times, and is not fully settled (t). It is conceived, however, that, according to the decisions upon the subject, the discharge of a servant may be justified for the following causes :

- I. Wilful disobedience of any lawful order of his master.
- II. Gross moral misconduct, whether pecuniary or otherwise.
- III. Negligence in business, or conduct calculated seriously to injure his master's business.
- IV. Incompetence, or permanent disability from illness.

It is proposed to treat of each of these separately. But it may be first mentioned that if a servant who is

Servant
refusing to
quit may be
turned out by
force.

by the deed. The apprentice cannot therefore, as a general rule, be discharged for misconduct, the only remedy of the master being by action on the covenants in the indenture, *Winstone v. Linn*, 1 B. & C. 460; *Wise v. Wilson*, 1 C. & K. 662; *Phillips v. Telft*, 4 H. & N. 168. But an apprenticeship may contain a proviso or other agreement enabling the master to discharge the apprentice for misconduct, *Westrick v. Theodore*, L. R., 10 Q. B. 221. And in an action against a master for breach of his covenant to keep, teach, and maintain an apprentice, it would be a good defence that the apprentice by his own wilful acts has put it out of the master's power to carry out what he has contracted to do, *Raymond v. Minton*, L. R., 1 Ex. 244; as in a case where the apprentice was an habitual thief, *Leavoyd v. Brook*, (1891) 1 Q. B. 431. But the general rule would seem to be otherwise where the apprentice is entitled to a salary, *Mercer v. Whall*, 5 Q. B. 447.

(s) *Horton v. M'Murtry*, 29 L. J., Exch. 260.

(t) *Per* Lord Wensleydale in *Lomas v. Arding*, 10 Ex. 736. As to the right of a master to open letters addressed to a discharged manager, see *Stapleton v. Foreign Vineyard Association*, 12 W. R. 976; *Hermann Loog v. Bean*, 26 Ch. D. 306.

rightfully discharged refuse to quit his master's premises, his master would be perfectly justified in turning him out by force (*u*). But in all such cases it would, for obvious reasons, be more prudent to call in a constable or police officer for that purpose, or at least to procure the attendance of some respectable independent witness.

I. Wilful disobedience of any lawful order of his master. Disobedience.

Where (*x*) a yearly servant to a farmer, who usually breakfasted at five a.m., and dined at two, one day refused to go with the horses to the marsh, which was a mile off, before dinner, dinner being then ready, saying that he had done his due, and would not go till he had had his dinner, whereupon his master told him to go about his business, and he went accordingly without offering to obey his master's orders; Lord Ellenborough held that the master was justified in dismissing him.

So where (*y*) the plaintiff, who had agreed with the defendant (under 5 & 6 Will. 4, c. 19, ss. 2, 3) to serve as carpenter's mate of a vessel during a South Sea voyage, during the voyage mutinously refused to work the ship, except to an English port, whereupon he was put on shore at Java, and discharged, the defendant was held to be justified in discharging him.

Again, it has been held (*z*), that a master was justified in dismissing a housemaid, who persisted in leaving his house contrary to his orders, although she went to visit a sick and dying mother; Lord Wensleydale saying, "It

Spain v. Arnott.

Farm servant refusing to work at dinner time.

Renno v. Bennett.

Refusal to work ship except to certain port.

Turner v. Mason.

Housemaid persisting in leaving the house without permission.

(*u*) *Donaldson v. Williams*, 1 Cr. & M. 345; *Mackay v. Ford*, 29 L. J., Ex. 404. Where the manager of an hotel, who by the terms of his employment was to be allowed with his wife and family to reside on the premises, refused to leave the hotel upon his summary dismissal for continued intemperance, and sued his employer, the defendant obtained an interlocutory injunction which restrained the plaintiff from remaining in possession of the premises, *Collison v. Warren*, (1901) 1 Ch. 812.

(*x*) *Spain v. Arnott*, 2 Stark. 256; *Callo v. Brouncker*, 4 C. & P. 518 (see *Fischer v. Aide*, 3 M. & W. 486); *Amor v. Fearon*, 9 A. & E. 548.

(*y*) *Renno v. Bennett*, 3 Q. B. 768.

(*z*) *Turner v. Mason*, 14 M. & W. 112.

was laid down by Lord Ellenborough, in *Spain v. Arnott* (a), and by me in *Callo v. Bronncker* (b), and confirmed by the Court of Queen's Bench in *Amor v. Fearon* (c), that the wilful disobedience of any lawful order of the master is a good cause of discharge. Here the plea discloses a perfectly lawful order, namely, that the defendant should not absent herself from the service during a night, and the plaintiff's disobedience thereto. Then the question is, whether the replication discloses sufficient ground of excuse for such disobedience. *Prima facie* the master is to regulate the times when his servant is to go out from, and return to, his house. Even if the replication showed that he had notice of the cause of her request to absent herself, I do not think it would be sufficient to justify her in disobedience to his order; there is not any imperative obligation on a daughter to visit her mother under such circumstances, although it may be unkind and uncharitable not to permit her. But the replication states nothing to show that the defendant had any notice or knowledge of the mother's illness."

*Lilley v.
Elwin.*

Farm servant
refusing to
work during
harvest with-
out beer.

And similar principles were laid down in a case (d) in which the plaintiff was engaged as a waggoner to the defendant, but during the harvest worked in the field generally. The practice was, during harvest, to work till eight o'clock in the evening. The plaintiff refused to work till that hour, not as being an unreasonable hour, or as not being within the terms of his contract, but because strong beer of good quality was not allowed to him, according to a custom which he alleged to exist, but could not prove, the beer supplied being, as he contended, very bad small beer, not so good as water; whereupon the defendant refused any longer to employ the plaintiff, and took him before a magistrate, who discharged him, and he brought his action against the defendant. But it was held that the defendant had a right to discharge him, and

(a) 2 Stark. 256. See this case, *supra*, p. 109.

(b) 4 C. & P. 518.

(c) 9 A. & E. 518. See this case, *post*, p. 116.

(d) *Lilley v. Elwin*, 11 Q. B. 742, 756.

must be taken to have exercised that right by ordering him not to return, taking him before a magistrate, and acquiescing in the magistrate's order of discharge.

So, again, in the case of a messman to a regiment. The plaintiff was appointed messman by an agreement between himself and the mess committee, of which the defendant was the president, and as such the defendant signed the agreement. The committee was changed. One day, in consequence of an altercation between himself and another servant, the plaintiff declared that he would have nothing more to do with the mess and refused to send up dinner. After some minutes' delay the colonel of the regiment went downstairs, and asked the plaintiff if he meant to send up dinner; the plaintiff said he would not, and used language not respectful, upon which the colonel threatened to send for a file of soldiers and put him under arrest. The plaintiff then served dinner, after half an hour's delay. Next day the mess committee held a meeting and dismissed the plaintiff. He tendered an apology, which they refused to accept. He then brought his action for wrongful dismissal. Both Cockburn, C. J., and the jury thought there was just ground of dismissal (*e*).

Churchward v. Chambers.

Messman of a regiment refusing to send up dinner.

But a mere obstinate refusal to work will not, of itself, justify the dismissal of a servant, as it might be an obstinate refusal to do an unlawful act (*e.g.*, to work at trade on Sunday) (*f*).

Obstinate refusal.

II. Gross moral misconduct, whether pecuniary or otherwise (*g*).

Moral misconduct.

Thus, if a servant robs his master, he may, although a month's notice is required, dismiss him without any notice, and need not pay him any wages (*h*).

Robbery.

And if a servant habitually embezzle his master's property, the amount embezzled is wholly immaterial;

Embezzlement.

(*e*) *Churchward v. Chambers*, 2 Fost. & F. 229.

(*f*) *Jacquot v. Bourra*, 7 Dowl. 348.

(*g*) *Callo v. Brouncker*, 4 C. & P. 518.

(*h*) *Per Park, J.*, in *Cunningham v. Fonblanque*, 6 C. & P. 49.

and although the arrears of wages sought to be recovered may exceed the amount embezzled, the servant is not entitled to anything (*i*).

*Baillie v.
Kell.*

Accountant
falsifying
accounts.

And where (*j*) the accountant to a company received money for which he did not account, and falsified the accounts furnished by him, his employers were held justified in dismissing him, although they did not assign that as the cause of his dismissal.

*Atkin v.
Acton.*

Clerk a -
tempting to
ravish maid-
servant.

Upon similar principles it has been held, that a clerk and traveller, at 80*l.* a year, who lived and boarded in his master's house, was rightfully dismissed for assaulting his employer's maid-servant with intent to ravish her (*k*). And it is said that a maid-servant being with child (*l*), or a man-servant being the father of a bastard child (*m*), is a good cause of discharge.

Street-keeper
receiving
gratuities for
connivance at
breach of
rules.

And it would probably be held, that a street-keeper or other officer receiving gratuities for conniving at the breach of regulations which it was his duty to enforce, might properly be dismissed for so doing (*n*).

Drunkenness.

Drunkenness would also be a justifiable cause of discharge, if pleaded (*o*).

Subsequent
discovery of
dishonesty in
previous
place.

It would seem, however, to be no ground for discharging a servant that, after the contract of hiring was entered into, the master discovered that the servant had acted dishonestly or fraudulently to a former master, unless indeed the servant had by fraud, misstatement or concealment of the facts, induced the second master to hire him (*p*).

(*i*) *Brown v. Croft*, 6 C. & P. 16, note; and see *Spotswood v. Barrow*, 5 Exc. 110.

(*j*) *Baillie v. Kell*, 4 Bing., N. C. 638.

(*k*) *Atkin v. Acton*, 4 C. & P. 208.

(*l*) *Cald.* 11. *Connors v. Justice*, 13 Ir. C. L. R. 451, 457, where Monahan, C. J., said,—"Can any one doubt that chastity is an essential requisite in a female domestic servant? And can any one doubt that the master or mistress of a family would be justified in dismissing without the usual month's notice a female domestic servant for unchaste conduct?"

(*m*) *R. v. Welford*, *Cald.* 57.

(*n*) *Bogg v. Pearse*, 10 C. B. 531.

(*o*) *Speck v. Phillips*, 5 M. & W. 279; *Wise v. Wilson*, 1 C. & K. 662, *post*, p. 116.

(*p*) *Andrews v. Garstin*, 31 L. J., C. P. 15.

In such a case the second master's remedy would be to dismiss him with notice.

III. Negligence in business, or conduct calculated seriously to injure his master's business.

It is not every piece of negligence on the part of a servant that will justify his being dismissed without notice. In some cases negligence in comparatively small matters may become habitual, and this habitual negligence may become so serious as to form a good ground to the master for dismissing the servant. Negligence.

Upon this ground, in an action for a month's wages by a servant who was dismissed without warning, on the ground that he was negligent in his conduct, frequently absent when his master wanted him, and often slept out at nights, Lord Kenyon held that the plaintiff was not entitled to recover on account of his misconduct. And, in another case (*q*), Lord Wensleydale said, "That for habitual neglect the defendant was at liberty to part with the plaintiff." And, in another (*r*), Park, J., observed, "If a servant is negligent in his business and injures his master, I am not prepared to say that the master may not dismiss him, as if he were kept it might be very injurious, as he might do the business very carelessly when he knew he was not to be kept longer."

But a single act of negligence may in some circumstances justify dismissal. The question is one of fact and degree depending on the circumstances of each particular case. A master has therefore (*s*) been held to have been justified in dismissing a servant for his neglectful management of a printing press on one occasion by which serious damage was caused to the machine.

So, too, a single wrongful act inconsistent with the duty of the servant to his master, and the continuance of confidence between them, will justify his being dis-

(*q*) *Robinson v. Hindman*, 3 Esp. 235.

(*r*) *Callo v. Brouncker*, 4 C. & P. 518.

(*s*) *Baster v. London & County Printing Works*, (1899) 1 Q. B. 901.

missed (*t*). "The rule of law," said Lord Esher, M. R. (*u*), "is that where a person has entered into the position of servant, if he does anything incompatible with the due or faithful discharge of his duty to his master, the latter has a right to dismiss him. The relation of master and servant implies necessarily that the servant shall be in a position to perform his duty duly and faithfully, and if by his own act he prevents himself from doing so, the master may dismiss him. . . . What circumstances will put a servant into the position of not being able to perform in a due manner his duties, or of not being able to perform his duty in a faithful manner it is impossible to enumerate. Innumerable circumstances have actually occurred which fall within that proposition, and innumerable other circumstances which never have yet occurred, will occur, which also will fall within that proposition. But if a servant is guilty of such a crime outside his service as to make it unsafe for a master to keep him in his employ, the servant may be dismissed by his master; and, if the servant's conduct is so grossly immoral that all reasonable men would say that he cannot be trusted, the master may dismiss him." And the Court in this case held that a firm of merchants were justified in dismissing a servant whom they had engaged for ten years as their confidential clerk and whom they discovered to have been speculating in differences upon the Stock Exchange to the extent of many hundreds of thousands of pounds.

*Turner v.
Robinson.*

Advising
apprentice to
quit.

Upon these principles, the foreman to silk manufacturers was held to be rightly discharged (and, moreover, liable to an action), for advising and assisting an apprentice to quit their service and go to America (*v*) :

(*t*) *Huston Deep Sea Fishing & Ice Co. v. Ansell*, 39 Ch. D. 339, where it was held that a company were justified in dismissing their manager, who on one occasion in which he had made a contract on behalf of his employers for the building of some fishing smacks, had received a commission from the builders.

(*u*) *Pearce v. Foster*, 17 Q. B. D. 536.

(*v*) *Turner v. Robinson*, 5 B. & Ad. 789.

and the clerk to a company was held to be rightly dismissed for entering in a minute-book a protest, in his own handwriting, against a resolution of the directors, calling a meeting to appoint his successor, as such an act was inconsistent with his service (*w*).

Ridgway v. The Hungerford Market Company.

So in an action by the acting manager of Covent Garden theatre, for wrongful dismissal from his situation, &c. (*x*); to which, amongst other pleas, the defendant pleaded that the plaintiff's conduct was calculated to prejudice the interests of the theatre: Vaughan, J., said, "It is a question of fact, whether the plaintiff was so conducting himself as that it would have been injurious to the interests of the theatre to have kept him (*y*). If he was, I should have no difficulty in saying that it would be good ground of dismissal."

Lacy v. Osbaldiston.
Acting manager of theatre guilty of conduct likely to injure it.

Again, where (*z*) the defendant, a master-builder, dismissed the plaintiff, a journeyman carpenter, for poaching on the premises of Mr. T., a gentleman for whom the defendant was working, and at whose premises the plaintiff was engaged working; Coleridge, J., in leaving the question to the jury whether or no this was just ground of dismissal, said, "In dealing with this question, I think that you ought to consider what Mr. T. had a right to expect from the defendant and his men. If a gentleman engages a tradesman who has several workmen under him, he has a right to expect that the workmen will conduct themselves well. It is said that they did no damage; but I do not think that it entirely depends on that, because it might have been, that Mr. T. might have said, 'I will not allow the workmen to go into my garden,' and if they had done so, they would have done no actual damage; but still, if the defendant employed persons who acted in that way, he would soon find that he was injured in his business, and would

Read v. Dunsmore.
Master-builder dismissing carpenter for poaching on employer's premises.

(*w*) *Ridgway v. Hungerford Market Co.*, 3 A. & E. 171.

(*x*) *Lacy v. Osbaldiston*, 8 C. & P. 80.

(*y*) And see *East Anglian Railway Co. v. Lythgoe*, 2 L. M. & P. 221.

(*z*) *Read v. Dunsmore*, 9 C. & P. 588.

lose his custom, because gentlemen would not engage him."

*Amos v.
Fearon.*
Clerk claiming
to be partner.

So a wine merchant (*a*) was held justified in dismissing a clerk, at a yearly salary, who also, at certain periods, received a portion of the profits (but this, as the master alleged, was a mere gratuity), for claiming to be a partner, as he thereby disclaimed being a servant.

*Cussons v.
Skinner.*
Manager of
company
accepting bill
in blank.

And it was said by Lord Abinger (*b*) that the accepting of an undrawn bill of exchange, in blank, by the manager of a cotton company, was wrong, and would have been a very justifiable cause of discharging him the next day after it was discovered (*c*).

*Filleul v.
Armstrong.*
French master
not returning
for two days
after vacation.

But it has been held (*d*), that a schoolmaster was not justified in discharging the plaintiff, a teacher of French and drawing, for not returning to the school for two days after the vacation: as it did not appear that the plaintiff had been guilty of any immorality, nor that the defendant was obliged to hire another person, or that the plaintiff's department was not, in fact, adequately filled, nor that the instructions in French or drawing were impeded, or that the business of the school was suspended for a single hour.

*Wise v.
Wilson.*
Surgeon's
assistant
getting drunk
and making
shop-boy mix
medicines.

And where (*e*) a surgeon by a written agreement, not under seal, agreed with the plaintiff, in consideration of a premium of 50*l.*, to take her son, a young man seventeen years old, as pupil and assistant for three years, to assist him in his studies, to allow him to attend lectures, and to provide him with board and lodging, but dismissed

a) *Amos v. Fearon*, 9 A. & E. 518. See also *Meyer v. Whall*, 5 Q. B. 447, where, to an action of covenant by an articulated clerk against a solicitor for dismissing him, the defendant pleaded that the plaintiff conspired to induce the defendant's clients to leave him, and disclosed his professional secrets. See also in *Hudson v. Carley*, 27 L. J., Exc. 205, a plea that plaintiff, whilst in defendant's service, entered into negotiations for carrying on the same business as defendant without his consent.

b) In *Cussons v. Skinner*, 11 M. & W. 170. The decision in that case, however, did not turn on this point.

c) In *Last Anglian Railway Co. v. Lythgoe*, 2 L. M. & P. 221, a clerk to a railway company was dismissed for disclosing accounts of the railway to another company; but, under the circumstances of the case, the County Court judge thought him entitled to his salary up to his discharge.

d) *Filleul v. Armstrong*, 7 A. & E. 557.

e) *Wise v. Wilson*, 1 C. & K. 662; *Phillips v. Clift*, 4 H. & N. 168.

him in consequence of his coming home drunk about five times, and on some occasions, when he came home late, desiring the shop-boy to make up the medicines, Lord Denman, in summing up to the jury, said, "There is a great distinction between a contract of apprenticeship and a contract with a servant. A person has a right to dismiss a servant for misconduct, but has no right to turn away an apprentice because he misbehaves. This is a mixed case, something between that of apprenticeship and service. The plaintiff's son goes to the defendant to render assistance to him in his business, although he is also to pursue his studies; and as a justification of his dismissal, the defendant has pleaded not that the plaintiff's son did not perform all things on his part to be performed, but that he did things injurious to the defendant's practice, and so misconducted himself as to be dangerous to the defendant's practice as a surgeon. It is proved beyond all doubt that, on some occasions, the plaintiff's son came to the defendant's house intoxicated, but I think that alone would not justify the defendant in dismissing him. It is also proved that, on several occasions, in consequence of the plaintiff's son coming home late, he could not compound the medicines, and employed the shop-boy to do it. Now, I think, this affords matter for serious consideration, *and if you think that from this conduct of the plaintiff's son real danger was occasioned to the master's business*, you ought to find your verdict for the defendant, *as the defendant was then, in my opinion, justified in dismissing him.*" But the plaintiff had a verdict.

And where (f) the plaintiff was engaged as clerk to the defendant, under a contract of hiring for two years, to conduct the business of a shipping agent at Southampton, and in the course of his employ it was his duty to pay freight, dock dues, &c., to meet which the

Smith v. Thompson.
Clerk to shipping agent applying money given for business purposes to his own salary.

(f) *Smith v. Thompson*, 8 C. B. 44.

defendant remitted money. On one occasion the plaintiff wrote to the defendant for 140*l.*, inclosing an account of the purposes for which it was required, one of them being the payment of 30*l.* salary due to himself. Ten days afterwards the defendant sent the plaintiff 100*l.* in a letter, directing him to apply the money for "business purposes," and he applied 30*l.* in payment of his own salary, whereupon the defendant discharged him, and the plaintiff brought his action for wrongful discharge. At the trial the judge left it to the jury to say whether the plaintiff had been guilty of any wrongful and improper appropriation of the money, or of disobedience of orders. And it was held by the Court of Common Pleas to have been properly so left, and that the judge was not bound to tell the jury that it was not necessary, to justify the dismissal of the plaintiff, that he should have been guilty of any moral turpitude.

*Lomax v.
Arding.*

Manager of
ironworks
not trying to
promote
master's
interests.

And where (*g*) the plaintiff agreed with the defendant to serve him for three years as manager of certain ironworks, at a salary of 4*l.* per week, upon the terms that the plaintiff would during that time use his best endeavours to promote the interest of the defendant, and attend to and carry out all reasonable requests made to him by the defendant, a plea that the plaintiff did not, while he was in the defendant's employ under the agreement, use his best endeavours to promote the interest of the defendant according to the agreement, wherefore the defendant dismissed the plaintiff, and refused to pay him any salary after such dismissal, was held a good plea to an action for wrongful dismissal. In that case, Pollock, C. B., said, "Suppose the plaintiff had conducted himself on all occasions in a negligent and lazy spirit, there may be insuperable difficulty in a legal definition of the plaintiff's conduct, and yet the defendant would be justified in discharging him from his service. It would be a question of evidence."

g) *Lomax v. Arding*, 10 Ex. 731.

Where, by an agreement in writing, A. was appointed surveyor or agent of B. for two years and a half, at a salary of 200*l.* a year, and a commission on every house let by him for B., and the agreement expressly provided that under no pretence whatsoever should A. be considered B.'s agent to receive any money on his account: it was held that A. having received deposit money from persons to whom he had let houses for B., was a good defence to an action for dismissing A. before the end of the term (*h*).

Bray v. Chandler.
Agent forbidden to receive money receiving it.

The plaintiff, who was employed by the defendant to serve him in the business of a certain manufacture, and engaged to "bring all his knowledge to bear upon it," without the knowledge of his master entered into a contract with a merchant (not dealt with by his master) for the supply of certain articles used in the manufacture, the result of which was a claim to a considerable amount by the merchant against the master, who thereupon dismissed the plaintiff; it was held that the dismissal was justifiable (*i*).

Horton v. M'Murtry.

If, however, the servant's misconduct be not such as to go to the *whole consideration* of the contract on the part of the master, he will not be justified in dismissing the servant, but must, if necessary, resort to a cross action against the servant: or set up a counter-claim in answer to an action for wrongful dismissal.

Cross action when necessary.

Where, therefore (*j*), to an action for wrongfully discharging the plaintiff from the defendant's employ as European correspondent of a newspaper, at a salary, the defendant pleaded, firstly, that the engagement was made upon the terms and condition that the plaintiff should, by every steamer from Liverpool to New York, forward a letter containing European news, but plaintiff wrongfully neglected to forward any letter containing such

Gould v. Webb.
Newspaper correspondent omitting to send news letter, and overdraw for salary, no ground of discharge.

(*h*) *Bray v. Chandler*, 18 C. B. 718.

(*i*) *Horton v. M'Murtry*, 29 L. J., Exc. 260.

(*j*) *Gould v. Webb*, 4 E. & B. 933.

news by several steamers that sailed from Liverpool to New York, wherefore defendant discharged him; and also, secondly, that defendant employed plaintiff upon the terms and condition that plaintiff might draw bills upon defendant for the amount of his salary as it should become due, but not for any sum not due; but plaintiff wrongfully drew on defendant and negotiated bills for sums not due, which were presented to defendant and dishonoured to the damage of defendant's credit, wherefore defendant discharged plaintiff: both pleas were held bad on demurrer, as not showing a default by plaintiff going to the whole consideration of defendant's contract. The breach of the *stipulations* on the part of the plaintiff did not amount to such misconduct as to authorize the defendant to discharge him. It might have been that there was no news to send; and the second plea would be satisfied by proof that the plaintiff had drawn a bill for half-a-crown too much.

IV. Incompetence, or permanent disability from illness.

Incompetence
good ground
of discharge.

Where a servant of any sort is engaged on account of his skill or peculiar ability to perform certain duties, and turns out to be perfectly unskilful and incompetent to discharge the duties for which he was hired, the master will be justified in rescinding the contract and discharging the servant. Thus, where in an answer to an advertisement in a newspaper for scene-painters, the plaintiff applied to the defendant, a correspondence ensued, and the defendant ultimately hired the plaintiff in that capacity, but he turned out to be quite incompetent, and was discharged: it was held that such incompetence was a valid reason for discharging him, and in an action brought as for a wrongful discharge, the defendant succeeded (*h*). In giving judgment for the defendant in that case, Willes, J., said: "Where a skilled labourer, artisan or artist is employed, there is on his part an

*Harmer v.
Cornelius.*

h. *Harmer v. Cornelius*, 5 C. B., N. S. 236.

implied warranty that he is of skill reasonably competent to the task he undertakes—‘*spondes peritiam artis.*’ Thus, if an apothecary, a watchmaker, an attorney, be employed for reward, they each impliedly undertake to possess and exercise reasonable skill in their several arts. The public profession of an art is a representation and undertaking to all the world that the professor possesses the requisite ability and skill (*l*). An express promise or an express representation in the particular case is not necessary. It may be, that if there is no general and no particular representation of ability and skill the workman undertakes no responsibility. If a gentleman, for example, should employ a man that is known never to have done anything but sweep a crossing to clean or mend his watch, the employer probably would be held to have incurred all risk himself. But in the case under consideration, the correspondence shows, in addition to the implied representation, an express and particular representation by the plaintiff that he did possess the requisite skill. The next question is this: supposing that when the skill and competency of the party employed are tested by the employment, he is found to be utterly incompetent, is the employer bound, nevertheless, to go on employing him to the end of the term for which he is engaged, notwithstanding his incompetency? This is a question upon which we have been furnished by the bar with no authority, probably because such labour being seldom retained for a long term certain, the question has not often arisen. But it seems very unreasonable that an employer should be compelled to go on employing a man who, having represented himself competent, turns out to be incompetent. An engineer is retained by a railway company to drive an express train for a year, and is found to be utterly unskilful or incompetent to drive or regulate the locomotive, are the railway company still bound, under pain

*Harmer v.
Cornelius.*

(*l*) See *Jenkins v. Betham*, 15 C. B. 168.

*Harmer v.
Cornelius.*

of an action, to entrust the lives of thousands to his dangerous and demonstrated incapacity? A clerk is retained for a year to keep a merchant's books, and it turns out that he is ignorant not only of bookkeeping but of arithmetic, is the merchant bound to continue him in his employment? Misconduct in a servant is, according to every day's experience, a justification of a discharge. The failure to afford the requisite skill which had been expressly or impliedly promised, is a breach of legal duty, and therefore misconduct. The rule of the civil law—'*Imperitia culpe adnumeratur*'—applies. We may add that a precedent of a plea grounded on the implied condition of competency, is to be found in the late Mr. Joseph Chitty's book on Pleadings, edited by the late Mr. Pearson, p. 363. So in *Spain v. Arnott (m)*, Lord Ellenborough, speaking of a servant who had refused to perform his duty, says, 'The master is not bound to keep him on as a burthensome and useless servant to the end of the year': and it appears to us that there is no material difference between a servant who will not, and a servant who cannot, perform the duty for which he was hired."

*Cuckson v.
Stones.*

Temporary
illness no
suspension of
wages under a
permanent
contract not
rescinded.

But where (n) the plaintiff, having entered into an agreement that he should serve the defendant and W. for ten years in the capacity of a brewer, and teach them to brew: that the defendants and W. were to pay the plaintiff 20*l.* on the execution of the agreement, to find him a house, and to supply him with coals for the ten years, and to pay him the weekly sum of 2*l.* 10*s.* during that term. He served the defendant and W. till W.'s death, and afterwards worked for defendant up to Christmas, 1857, when he was taken ill. He was confined to his bed till March, and was unable to attend to his work till 19th July, 1858, when he was again employed about the brewery, and paid as before. During

(m) 2 Stark. 256.

(n) *Cuckson v. Stones*, 1 Ell. & Ell. 248.

his illness he was from time to time consulted by the defendant as to the mode of brewing, but was unable to do any actual work for defendant; and it was admitted that the *contract had not been rescinded*. It was held that the plaintiff was entitled to recover under it the wages for the time during which he was disabled by sickness from working; although a plea to the claim for wages that the plaintiff was not during the time in question ready and willing or able to render, and did not in fact render, any service, was held on demurrer to be a good plea in point of law, in the sense that the plaintiff voluntarily and wilfully refused or omitted to serve. And in giving judgment, Lord Campbell said, "We concur in the observations of Willes, J., in *Harmer v. Cornelius*, and if the plaintiff from unskilfulness had been wholly incompetent to brew, or by the visitation of God had become, from paralysis or any other bodily illness, permanently incompetent to act (o) in the capacity of brewer for the defendants, we think that the defendants might have determined the contract. He could not be considered incompetent by illness of a temporary nature. But if he had been struck with disease so that he could never be expected to return to his work, we think the defendants might have dismissed him and employed another brewer in his stead. Instead of being dismissed he returned to the service of the defendants when his health was restored, and the defendants employed him, and paid him as before. At the trial the defendants' counsel admitted that the contract was not rescinded. The contract being in force, we think that here there was no suspension of the weekly payments by reason of the plaintiff's illness and inability to work. It is allowed that under this contract there could be no deduction from the weekly sum in respect of his having been disabled by illness from working for one day of the

Contract might be rescinded if servant permanently disabled by illness.

(o) As to this, see *Boast v. Frith*, L. R., 4 C. P. 1; *Robinson v. Davison*, L. R., 6 Ex. 269; *Poussard v. Spiers*, 1 Q. B. D. 410. See also *Bettini v. Gye*, 1 Q. B. D. 183; *K v. Raschen*, 38 L. T., N. S. 38.

week; and while the contract remained in force we see no difference between his being so disabled for a day, or a week, or a month."

2. AS BETWEEN THE MASTER AND THIRD PERSONS.

Remedies of master by action against third persons for depriving him of services of servant.

Loss of service gist of such action;

and must be the necessary

A master may maintain an action against any person who deprives him of the services of his servant, either by enticing him away from his master (*p*), or by harbouring and detaining him after having been apprised of the former contract (*q*); or by beating, confining or disabling him; or by seducing a female servant (*r*). The master may also, where wages have been earned by a servant enticed away or harboured by another person, waive his right of action for such tortious act, and sue for the earnings of his servant. In all these cases the master's right of action arises out of the property which he has acquired, by the contract of hiring, in the labour of his servant; and in all of them, except the action for his servant's earnings, the gist of the action is the loss of service, without an allegation of which no action can be sustained by a master, however great the injury to his servant (*s*). Whilst, therefore, on the one hand, a mere attempt to deprive a master of the services of his servant without any damage following upon it would not give the master a right of action (*t*), so, on the other, it has been held that a master, who has recovered in an action against the servant a stipulated penalty for leaving his service, cannot maintain an action against the person who induced him to leave (*u*). Moreover, the loss of service

(*p*) F. N. B. 91, l. 1, 167 B.; *Evans v. Walton*, *post*, p. 129. In what cases a master is entitled to maintain litigation by his servant, without exposing himself to a charge of maintenance, see *Elborough v. Ayres*, l. R., 10 Eq. 367.

(*q*) F. N. B. 168, Winch, 51.

(*r*) Com. Dig. Trespass, B. 5; Pleading, 3 M. 11.

(*s*) *Robert May's case*, 9 Rep. 113 a; *Poley v. Osborn*, cited 10 Rep. 130 b; *Humbury v. Ireland*, Cro. Jac. 618; *Chamberlain v. Harvey*, 5 Mod. 182; *Hall v. Hollander*, 1 B. & C. 660; *Gwynnell v. Wells*, 7 M. & G. 1033; *Fayer v. Greenwood*, 1 Ex. 61; *Darvis v. Williams*, 10 Q. B. 725.

(*t*) *Per* Lord Mansfield in *Bird v. Randall*, 3 Burr. 1352.

(*u*) *Bird v. Randall*, *ubi supra*. *Sed quæritur*, see *post*, p. 129.

must be the natural and necessary consequence of the defendant's act, otherwise the master cannot maintain any action. Where, therefore, the director of certain oratorios had, at considerable expense, engaged one Mara, who, in consequence of a libel published by the defendant, refused to sing, being afraid of being hissed; Lord Kenyon held that the plaintiff could not maintain an action against the defendant, as the injury complained of was too remote, and impossible to be connected with the cause assigned for it (*v*).

consequence
of defendant's
act.

OF THE ACTION FOR ENTICING AWAY A SERVANT.

An indictment will not lie for enticing an apprentice or servant away from his master, it being only a private injury, which may be redressed by a civil action (*w*). The Court, however, will not, on motion, quash such an indictment (*x*); but the defendant must plead, demur, or move in arrest of judgment (*y*). It has been held (*z*) that conspiracies or combinations to induce workmen to break their contracts of service were indictable, but the law on this subject seems now to depend upon the provisions of the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86) (*a*).

Indictment
will not lie.

It was held that if one take away my apprentice or servant by force, an action of trespass will lie (*b*): but

Action will lie.

(*v*) *Ashley v. Harrison*, 1 Esp. 48, which was an action for libel. See *Taylor v. Neri*, 3 Esp. 386. In *Evans v. Walton*, L. R., 2 C. P. 615. Willes, J., observed, "I doubt whether *Taylor v. Neri* is maintainable after *Lumley v. Gye*, 2 E. & B. 216."

(*w*) *R. v. Daniel*, 6 Mod. 99, 182; Com. Dig. Indictment, G. 3. Under sect. 236 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), it is an offence to persuade or attempt to persuade a seaman or apprentice to desert from a British ship; see *Poll v. Danbe*, (1901) 2 K. B. 579.

(*x*) Trin. 13 Will. 3, B. R.; see *R. v. Bilton*, 1 Salk. 372.

(*y*) As in *R. v. Daniel*, *ubi supra*.

(*z*) *R. v. Rowlands*, 5 Cox, C. C. 466; *R. v. Duffield*, 5 Cox, C. C. 404; *R. v. Druitt*, 10 Cox, C. C. 592. See Mr. Justice Wright's book on the Law of Criminal Conspiracies.

(*a*) The Act is printed in the Appendix. See especially sect. 3 and the judgment of Lord Coleridge, C. J., in *Gibson v. Lawson*, (1891) 2 Q. B. 545. See also Chapter IX., *post*, on Combinations amongst Masters and Workmen.

(*b*) *R. v. Daniel*, *ubi supra*; *Reaveley v. Mainwaring*, 3 Burr. 1306; *Gilbert v. Schwenck*, 14 M. & W. 488; where it was held that one

Mere attempt
will not sup-
port action.

if he merely entice him to leave, and he do leave, an action on the case is the proper remedy (c). A mere attempt to entice a servant away without any damage following, would not, however, entitle the master to maintain an action (d). But it is no objection to such an action that the servant was only a journeyman, who worked by the piece, if he were the plaintiff's servant (e). A man, however, who lived in his own house, and took in work for different people, could scarcely be called the journeyman of any particular master (f).

What sort of
servants this
action applies
to.

*Lumley v.
Gye.*

A question has been raised as to what sort of servants this action may be brought for the seduction of. And it has been held by three judges of the Court of Queen's Bench (g), that an action lies for maliciously procuring a breach of contract to give exclusive personal services for a time certain, equally whether the employment has commenced, or is only *in fieri*, provided the procurement

testamentary guardian was not justified in taking an infant ward out of the lawful service of another testamentary guardian.

(c) *R. v. Daniel*, *ubi supra*; see *Hambleton v. Fecre*, 2 Wms. Saund. 170.

(d) *Bird v. Randall*, 3 Burr. 1352.

(e) *Hart v. Aldredge*, Cowp. 54; *Blake v. Langton*, 6 T. R. 221.

(f) *Hart v. Aldredge*, Cowp. 54.

(g) *Lumley v. Gye*, 2 E. & B. 216: where it was held that an action lay for seducing a dramatic performer away from plaintiff's theatre. Coleridge, J., in support of his judgment, refers to the 2nd section of the Statute of Laborers and the form of writ given by Fitzherbert, N. B. 167, B. as always reciting the statute. But the first writ given by Fitzherbert is founded upon the 3rd section of the statute, and is to recover the *penalty* there given to the party grieved. The other writs are against the *servant*, and it would hardly be contended at the present day that *such* actions must be confined to the class of servants referred to by the Statute of Laborers. It would seem also from the rule given in Latw. 1548, that the mere recital of the statute would not show that the action lay not at common law. It is there said that where an action lay both at common law and by statute, it you proceed under the statute you must recite the statute, for "without rehearsal, *non potest*, whether he uses the action by the common law, *sicut potest*, or the action on the statute." It is also added, "If there were no action at common law, the statute should be rehearsed." So the recital of the statute in a writ does not *prove* that the action did not lie at common law, but only that the plaintiff is not using the action at common law in this instance. Thus leaving the matter where it was. Again, it may be asked, if this form of action is founded entirely upon the Statute of Laborers, why did it not cease when that statute was repealed, 5 Eliz., 26 & 27 Vict. c. 125? Moreover, if the judgment of Coleridge, J., is right, what becomes of the common action for seduction of a daughter and servant? Is that to be only brought in cases within the Statute of Laborers? It is notoriously otherwise. In the Year Book, Michaelmas, 39 Ed. 3, fo. 37 B, it is said: "Although this action be given by statute, the writ lay at common law, and is not defeated by the statute."

be during the subsistence of the contract, and produces damage, and that to sustain such an action it is not necessary that the employer and employed should stand in the strict relation of master and servant. Coleridge, J., however, dissented, and in a long judgment, which deserves an attentive perusal, gave elaborate reasons for holding that the action was founded on the Statute of Laborers, and is strictly confined to cases where the employer and employed stand in such relation of master and servant as was within that statute; and that in all other cases the remedy for a breach of contract is only on the contract, and against those privy to it.

This decision of the Court of Queen's Bench was considered by the Court of Appeal in 1881 in a case (*h*) in which it was held that an action lies against a third person who maliciously induces another to break his contract of exclusive personal service with an employer which thereby would naturally, and did in fact cause, an injury to such employer, although the relation of master and servant may not strictly exist between the employer and employed.

These two cases were the subject of much discussion in a recent case in the House of Lords (*i*), and the dicta of Brett, L. J., in delivering judgment in *Bowen v. Hall* on the subject of malice were disapproved. Lord Herschell said that he was satisfied that in *Lumley v. Gye* the majority of the Court regarded the circumstance that what the defendant procured was breach of contract as the essence of the cause of action; and that though the

(*h*) *Bowen v. Hall*, 6 Q. B. D. 333, in which the opinion of the majority of the Court in *Lumley v. Gye* was approved by Lord Selborne, L. C., and Brett, L. J., Lord Coleridge, C. J., dissenting.

(*i*) *Allen v. Flood*, (1898) A. C. 1. The real point decided in this case was that a servant had no right of action against a person who had merely informed the plaintiff's employers that most of their workmen would leave them if they did not discharge the plaintiff, although in giving this information the defendant had acted maliciously and with intent to injure the plaintiff: see *Quinn v. Leatham*, (1901) A. C. 495, where Lord Macnaghten said that the head-note to *Allen v. Flood* might well have been in words used by Parke, B., in giving judgment in *Stevenson v. Newnham*, 13 C. B. 297, "an act which does not amount to a legal injury cannot be actionable because it is done with a bad intent."

word "maliciously" was to be found in the declaration the Judges in that case did not regard the allegation as involving the necessity of proving an evil motive on the part of the defendant, but merely as implying that the defendant had wilfully and knowingly procured a breach of contract.

In the last case on this subject (*j*) *Lumley v. Gye* was again held to be correctly decided. Lord Macnaghten said he thought the decision right, not on the ground of malicious intention, but on the ground that a violation of legal right committed knowingly is a cause of action, and that it is a violation of legal right to interfere with contractual relations recognized by law, if there be no sufficient justification for the interference. And Lord Lindley said that the principle involved in *Lumley v. Gye* cannot be confined to inducements to break contracts of service, nor indeed to inducements to break any contracts. The principle which underlies the decision reaches all wrongful acts done intentionally to damage a particular individual and actually damaging him.

Scienter.

Binding
contract.

*Service de
facto.*

To support this action, it is necessary to prove that the defendant *knew* the person to be the plaintiff's servant (*k*); but not to particularize the means of enticement (*l*). There must also be a binding contract of service between the servant and his first master, or the plaintiff will fail (*m*); unless, perhaps, in the case of interruption of an actual subsisting service (*n*).

(*j*) *Quinn v. Leatham*, (1901) A. C. 495. In this case an action was held to lie in a case where the officers of a trade union combined together to induce the plaintiff's servants not to continue in his service, and threatened to call out his union workmen if he would not discharge some non-union men in his employ, with the result that damage was caused to the plaintiff. See Chap. IX., *post*.

(*k*) *Fores v. Wilson*, Peake, 55.

(*l*) *Wansmore v. Givernbank*, Willes, 582.

(*m*) *Sykes v. Dixon*, 9 A. & E. 693; and see *Gye v. Felton*, 4 Taunt. 876; *Pirkington v. Scott*, 15 M. & W. 657; *Hartley v. Cummings*, 5 C. B. 247. See the judgments of Lord Herschell and Lord Davey in *Allen v. Flood*, (1898) A. C. 1.

(*n*) *Per* Lord Denman, in *Sykes v. Dixon*, *ubi supra*; and *per* Maule, J., in *Hartley v. Cummings*, *ubi supra*; and see Y. B., 22 Hen. 6, 30; *Barber v. Dennis*, 6 Mod. 69; *Keane v. Boycott*, 2 H. Bl. 511.

In an action for enticing away a servant where it appeared that the plaintiff kept a public-house, that his daughter, who was about nineteen years old, helped in the house and business; that a fictitious letter was written by the defendant as if from a relation of the girl, saying such relation was ill and asking leave for the girl to come to her; that leave was given to the girl and she went away, but instead of going to such relation went to a house of ill-fame and stopped there with the defendant, and then returned to her father's house; it was held that it was a question of fact for the jury whether when the defendant caused her to leave she was the plaintiff's servant *de facto*, and whether his acts did cause her to deny her services, that the Court as a jury held the affirmative, and that the plaintiff was entitled to succeed (o). *Evans v. Walton.*

But the mere circumstance that the servant is an infant, and the contract therefore voidable, will not defeat the action (p). This action will not lie for inducing a servant to leave his master's service at the expiration of the time for which he was hired, although the servant had otherwise no intention of leaving his master (q). When this action will not lie.

It was also held by Lord Mansfield, in *Bird v. Randall* (r), that this action would not lie after the master has recovered from the servant a stipulated penalty for leaving the service, upon the ground, that if the seducer, or second master who employs the servant after the servant has paid the penalty, were to be liable to damages in an action brought by the first master for so doing, this would finally fall upon the servant, and in effect be an addition to the penalty; for the second master would pay the servant for his service no more than he estimates it to be worth to him; and if he must pay a sum of money *Bird v. Randall.*
Not after payment by servant of penalty for leaving.

(o) *Evans v. Walton*, L. R. 2 C. P. 615.

(p) *Keane v. Boycott*, *Evans v. Walton*, *ubi supra*, and see 7 T. R. 310, 314. If the contract be not for the benefit of the infant (as to which see *ante*, Chap. I.), and so is not binding on him, the action will fail: *de Francesco v. Barnum*, (No. 2) 45 Ch. D. 430.

(q) *Nichol v. Martyn*, 2 Esp. 734.

(r) 3 Burr. 1345; see *Cooper v. Shepherd*, 3 C. B. 266; *Buckland v. Johnson*, 15 C. B. 145.

Sed quære.

to the first master for damages for entertaining his servant, he will make his bargain with the servant in such manner as to pay him so much the *less*. And Lord Ellenborough said (s) he remembered *Wilson, J.*, ruling the same point at *Nisi Prius* upon the dry authority of the former decision, though, as it seemed to him, with considerable doubts upon his mind as to the propriety of it. But Lord Ellenborough said he never could entirely comprehend the ground on which *Bird v. Randall* proceeded. "It was assumed," he said, "that the sum taken as the penalty from the servant, was the extreme limit of the injury sustained by the master; but there is the doubt: for the penalty might have been so limited, because of the inability of the servant to undertake to pay more, and yet it might have been very far from an adequate compensation to the master for the injury done to him by another who seduced his servant from him." And upon *Lawrence, J.*, observing, "I suppose the Court proceeded upon the ground that the penalty was by the express stipulation of the parties made an equivalent for the loss of the service"; Lord Ellenborough added, "That is so *as between the parties themselves*; but it may admit of doubt whether that were the fair way of considering it as against a stranger, a wrongdoer."

On death of wrongdoer.

It seems that, in the event of the death of the wrongdoer, no action to recover damages would lie against his personal representatives in respect of his having enticed a servant away (t); but an action may be brought to recover the earnings of the servant who has been enticed away and harboured (u).

(s) In *Godsall v. Baldern*, 9 East, 78.

(t) *Phillips v. Homfray*, 24 Ch. D. 454, in which Bowen, L. J., delivering the judgment of the majority of the Court of Appeal, said that the only cases in which, apart from questions of breach of contract express or implied, a remedy for a wrongful act can be pursued against the estate of a deceased person who has done the act, are those in which property or the proceeds or value of property, belonging to another have been appropriated by the deceased person and added to his own estate or moneys.

(u) *Lightly v. Clouston*, 1 Taunt. 112.

OF THE ACTION FOR HARBOURING A SERVANT.

Where a person, *after notice*, continues to employ another man's servant, that other may maintain an action against him, although at the time he hired him the second master did not know that he was hiring another's man's servant; and, therefore, no action would lie for enticing him away (*v*).

Thus where (*w*) one Hobbs, who was retained by the plaintiff, a currier, to work by the piece, left the plaintiff's service on a dispute between them, and at the time of departure had some work in hand; he then applied for work to the defendant, who was also a currier, and who employed him, not knowing of his engagement with the plaintiff. A few days afterwards, the defendant having been apprised by the plaintiff that Hobbs was his servant, and had left his work unfinished, and being threatened with an action, in case he continued to employ Hobbs, requested the servant to return to his former master and finish his work. This Hobbs refused to do, and the defendant continued him in his service, whereupon the plaintiff brought his action for enticing Hobbs away, and harbouring him after notice. No evidence was given in support of the charge of enticing away, and it was contended, on the part of the defendant, that no action could be maintained for continuing to employ Hobbs after notice, as at the time the defendant engaged him he did not know he was the plaintiff's servant, but the objection was overruled. And *per Curiam*, an action will lie for receiving or continuing to employ the servant of another after notice, without enticing him away.

This cause of action, however, is generally joined with that for enticing away a servant, and the observations on that form of action apply to this also.

The action for harbouring the plaintiff's servants will

(*v*) *Fawcett v. Bearres*, 2 Lev. 63; *Fosset v. Breer*, 3 Keb. 59; probably *S. C.*

(*w*) *Blake v. Lanyon*, 6 T. R. 221; followed in *de Francesco v. Barnum* (No. 3) 63 L. T. Rep. 514.

not lie against the captain of an English ship, to which the plaintiff's slaves had escaped, for refusing to give them up to the plaintiff (*c*).

OF THE ACTION BY A MASTER FOR THE EARNINGS OF HIS SERVANT.

Master entitled to servant's earnings.

A master deprived of the services of an apprentice or servant, who has been enticed away and harboured by another master, is not confined to an action for damages for the injury he has sustained by the loss of his servant. He may in some cases waive the tort, and bring an action to recover the wages due to his apprentice or servant from such second master: the maxim in such cases being *quicquid acquiritur serro acquiritur domino* (*y*).

This rule of law had formerly a much more extensive signification than it now has: for, during the existence of villenage, whatever was acquired by the villein, whether realty or personalty, became the property of his lord under certain qualifications (*z*). But even now the rule holds in some degree with respect to apprentices and servants, though with a great difference in point of extent and application, for the relation of an apprentice and servant to the master is more mild and limited than that of a villein to his lord, and only imports that the master shall be entitled to their personal labour during the time stipulated either in a particular way, or generally according to the nature of the apprenticeship or service. Consequently the master cannot claim any other acquisitions than such as are the result of that labour (*a*).

When working for his master;

What the apprentice or servant earns by his labour whilst he remains with the master, or is actually working

(*y*) *Forbes v. Cochrane*, 2 B. & C. 448. See *Smith v. Gould*, 2 Salk. 667, as explained by Hargrave in his argument in *Sommersett's case*, 20 How. St. Tr. 65, note.

(*z*) Barrington on Stat. 276; Co. Litt. 117 *a*, note 1; Peake's Add. Cas. 121, note; Story on Ag. 421; Paley on Ag. 339; Grof. lib. 3 cap. 7, sect. 4, 2. The French maxim was "*Qui a le vlain, il a sa proie*;" vide 20 How. St. Tr. 36, note.

(*a*) Litt. es. 177, 191; Co. Litt. 123 *b*; and see the form of enfranchisement of a villein given in Barr. on Stat. 279.

(*a*) *Shanley v. Herry*, cited in *Sommersett's case*, 20 How. St. Tr. 55.

for him, falls so clearly within this principle, that there can be no room for doubt (*b*). Nor can there be any where the apprentice or servant is employed by another person with the knowledge and consent of the master, without any circumstances indicating a waiver of his earnings. Most of the cases upon this subject relate to apprentices in a seafaring way, whose wages and prize-money (*c*) as seamen, though earned whilst in another service, have been recovered by those to whom they were bound. But the principle which governs them seems to apply to apprentices and servants in general, and has indeed been extended so far as to give the master a right to the wages or earnings, whether the service is performed by the apprentice with or without the master's licence; and even though the earnings accrue in a trade or service different from that to which the apprentice is bound (*d*).

or with his knowledge and consent.

When working without his master's licence.

Thus, where (*e*) the defendant seduced an apprentice from on board the plaintiff's ship in Jamaica, and employed him as a mariner to assist in navigating his own ship home, the plaintiff brought an action for the wages earned by his apprentice, and recovered.

Lightly v. Clouston.

And payment to the master has been held to be an answer to an action by the apprentice for wages (*f*). And where (*g*) the captain of a ship let the ship to government at forty shillings per ton per month, to be paid to the owner, and an additional shilling per ton per month, to be paid to himself, for his services, but the whole earnings (including the shilling per ton) were paid to the

Payment to master, good;

and servant cannot recover them from him.

(*b*) *R. v. Wantage*, 1 East, 601; *R. v. Bradford*, 1 M. & S. 151.

(*c*) *Carsan v. Watts*, 3 Doug. 350, where the master was held not entitled to prize money, the usage being for the apprentice to have it. *Hill v. Allen*, 1 Ves. sen. 83.

(*d*) Co. Litt. 117 *a*, note 1; *Barber v. Dennis*, 6 Mod. 69. The case of *Eades v. Vandeput*, 5 East, 39, does not appear to be of much authority, for the reasons given in *Foster v. Stewart*, 3 M. & S. 191.

(*e*) *Lightly v. Clouston*, 1 Taunt. 112; and see *Foster v. Stewart*, 3 M. & S. 191; *Neate v. Harding*, 6 Ex. 349.

(*f*) *Bright v. Lucas*, Peake's Add. Cases, 121. See the note at the end of this case.

(*g*) *Thompson v. Havelock*, 1 Camp. 527; *Diplock v. Blackburn*, 3 Camp. 43.

owner, it was held that the captain could not maintain an action against the owner to recover the shilling per ton agreed to be paid to the captain.

This action lies after death of tortfeasor.

One advantage attending this form of action formerly was, that it might be brought after the death of the tortfeasor, which was not the case with an action framed on the tort (*h*).

Earnings paid to servant may be recovered from him by master.

If the wages or earnings have been paid to the servant the master may recover them from him in an action for money had and received (*i*).

Bloxam v. Elser.

It appears to be an exception to the rule, that a master is entitled to the profits resulting from his servant's labour,—that if a servant make an invention whilst in the employ of a master, the invention belongs to the servant, and the master cannot take out a patent for it. Though it is said to be otherwise where the servant is employed for the express purpose of inventing (*j*). That was the case as to Whitehouse's patent (*k*). There an individual was employed for the express purpose of suggesting improvements, and trying experiments of all kinds. The master so admitted before the Privy Council, when he applied for an extension of the patent, and the Privy Council, before they granted the extension,

Inventions by servant belong to him.

Alder, if employed on purpose to invent.

(*h*) *Per* Bayley, J., in *Foster v. Stewart*, 3 M. & S. 191; see *Phillips v. Homfray*, 21 Ch. Div. 451. For an instance of the waiver of a tort, an administratrix being sued on an implied contract by the deceased to pay money, see *Powell v. Rees*, 7 A. & E. 426.

(*i*) *Morison v. Thompson* L. R., 9 Q. B. 480.

(*j*) *Bloxam v. Elser*, 1 C. & P. 558. In that case Bayley, J. founded his observations on a previous case of one Arkwright, referred to in *Hall v. Thompson*, 8 Taunt. 395: though in Arkwright's case the invention appears to have been made by the servant *before* the service commenced: in which case it would undoubtedly belong to the servant. But see the Report in Davies' Patent Cases, 61; and *Makepeace v. Jackson*, 4 Taunt. 770, where it was held that a calico-printer, having discharged his head colourman, was entitled to the book in which that servant had entered the processes for mixing colours during his service, although many of the processes were the invention of the servant. That, however, was only an action of trover for the book which the master had originally provided. As to which see *Ellwood v. Liverpool Victoria Legal Friendly Society*, 42 L. T. 694. In 4 Burr. 2316 the copyright of Rolle's Abridgment was said to be in the king, as he employed the judges who pronounced the law, and at p. 2329 the king was also said to be entitled to the copyright of the year books, as he was at the expense of taking the notes.

(*k*) 1 Webster's P. C. 473.

compelled the master to give his servant a large remuneration (*l*). And if a person has discovered an improved principle, and employs engineers, or agents, or other persons to assist him in carrying out that principle, and they, in the course of the experiments arising from that employment, make valuable discoveries accessory to the main principle, and tending to carry that out in a better manner, such improvements are the property of the inventor of the original improved principle, and may be embodied in his patent, and, if so embodied, the patent is not avoided by evidence that the agent or servant made the suggestions of that subordinate improvement of the primary and improved principle (*m*). It would be difficult to define how far the suggestions of a workman employed in the construction of a machine are to be considered as distinct inventions by him, so as to avoid a patent, incorporating them, taken out by his employer. Each case must depend upon its own merits. But when we see that the principle and object of the invention are complete without it, I think it is too much that a suggestion of a workman employed in the course of the experiments of something calculated more easily to carry into effect the conceptions of the inventor should render the whole patent void (*n*).

Suggestions of servants may be embodied in master's patent.

In a case in which a manufacturer of tubes, at Birmingham, and his foreman (who had a salary of 300*l* a year), had together invented certain improvements, for which the master sought letters patent, the granting of which was opposed by the foreman, it was held by Lord Cranworth, L. C., that the letters patent ought only to be granted on the terms of their being vested in trustees for the benefit of *both* master and foreman (*o*). In that case, it appeared almost impossible to say which was entitled to the credit of the improvement in question.

Patent granted in trust for both master and servant.

(*l*) *Per* Cresswell, J., in *Allen v. Rawson*, 1 C. B. 570.

(*m*) *Per* Erle, J., 1 C. B. 567.

(*n*) *Per* Tindal, C. J., 1 C. B. 574.

(*o*) *Re Russell's Patent*, 2 De G. & Jones, 130.

“Stock author” sent to Paris to adapt farce, is “author” within Dramatic Copyright Act.

Shepherd v. Conquest.

However, it has been held that a “Stock Author” sent to Paris by the proprietor of an English theatre, for the express purpose of adapting a piece there in vogue for representation on the English stage, is the “author” of the piece, when so adapted, within the meaning of the Dramatic Copyright Act, 3 & 4 Will. 4, c. 15, which vests in the author of any dramatic piece the sole liberty of representing it at any place of dramatic entertainment.

This was decided in the following case (*p*): The plaintiffs, who were the proprietors of the Surrey Theatre, agreed by word of mouth with C., who was what is called a “Stock Author,” that he should go to Paris, for the purpose of adapting a piece there in vogue for representation on the English stage; that the plaintiffs should pay his expenses, and should have the sole right of representing the piece in London, C. retaining the right of representation in the provinces. C. went to Paris, produced a farce, and was paid by the plaintiffs as agreed. The farce was brought out at the Surrey Theatre by the plaintiffs, and afterwards at the Grecian Saloon by the defendant, who had obtained an assignment from C. The plaintiffs brought an action against the defendant for penalties, under the Dramatic Copyright Act (*q*). But it was held that the arrangement between them and C. did not make them the *authors* of the farce within the meaning of that Act, although it was contended on their behalf that, under the circumstances, C. ought to be considered as merely their servant, the produce of whose labour became the property of his masters at the moment of production, so that no assignment was necessary to vest the property in the latter; and the case was likened to those relating to patent inventions, in which suggestions of servant employed in perfecting a discovery, tending to facilitate

p *Shepherd v. Conquest*, 17 C. B. 427; followed in *Eaton v. Lake*, 20 Q. B. D. 378. In *Levy v. Rutley*, L. R., 6 C. P. 523, it was held that master and servant cannot be joint authors, without co-operation, in a common design.

(*q*) 3 & 4 Will. 4, c. 15.

its practical application, may be adopted by his employer, and incorporated into his design without detracting from the originality necessary to sustain a patent for the entire. And it was also contended that the productions of an author are to be dealt with in the same manner as the inventions of a workman, and that the former, like the latter, may become the property of an employer who hires the author's labour, and, as it was said, "buys his brains." To that it was answered that literary productions stand upon different and higher ground from that occupied by mechanical inventions; and that whilst both literary property and patents for inventions are both the creatures of statutes, the enactments respecting them differ widely in their origin and details, and Jervis, C. J., said, "We do not think it necessary in the present case to express any opinion whether, under any circumstances, the copyright in a literary work, or the right of representation, can become vested *ab initio* in an employer other than the person who has actually composed or adapted a literary work. It is enough to say, in the present case, that no such effect can be produced where the employer merely suggests the subject, and has no share in the design or execution of the work, the whole of which, so far as any character of originality belongs to it, flows from the mind of the person employed. It appears to us an abuse of terms, to say that, in such a case, the employer is the author of a work to which his mind has not contributed an idea; and it is upon the author in the first instance that the right is conferred by the statute which creates it. We cannot bring our minds to any other conclusion than that C., the person who actually made the adaptation, though at the suggestion of the plaintiffs, acquired for himself, as the author of the adaptation, and so far as that adaptation gives any new character to the work, the statutory right of representing it; and that, inasmuch as the plaintiffs have no assignment, in writing, of that right, they cannot sue for an infringement of it."

*Shepherd v.
Conquest.*

Firm of photographers not "authors" of photograph taken by their servant.

And it has been held that a firm of photographers, one of whose employes, at the instance of their manager, took a negative, making use of their machinery and materials for the purpose, were not the "authors" of the photograph within the meaning of the 25 & 26 Vict. c. 68 (Copyright Works of Art Act), and could not register themselves as such (*r*).

5 & 6 Vict. c. 45.

Copyright in periodicals, reviews, &c., composed in parts by various persons,

in proprietor (not author).

By the Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 18, it is enacted, that when any publisher, or other person, shall "project, conduct, and carry on, or be the proprietor of any encyclopædia, review, magazine, periodical work, or work published in a series of books, or parts, or any book whatsoever, and shall have employed, or shall employ, any persons to compose the same, or any volumes, parts, essays, articles, or portions thereof for publication in or as part of the same, and such work, volumes, parts, essays, articles, or portions shall have been or shall hereafter be, composed under such employment, on the terms that the copyright therein shall belong to such proprietor, projector, publisher, or conductor, and paid for by such proprietor, projector, publisher, or conductor, the copyright in every such encyclopædia, review, magazine, periodical work, and work published in a series of books or parts, and in every volume, part, essay, article, and portion so composed and paid for, shall be the property of such proprietor, projector, publisher, or other conductor, who shall enjoy the same rights as if he were the actual author thereof, and shall have such term of copyright therein as is given to the authors of books by this Act, except only that in case of essays, articles, or portions forming part of, and first published in, reviews, magazines, or other periodical works of a like nature, after the term of twenty-eight years from the first publication thereof respectively, the right of publishing the same in

(*r*) *Nottage v. Jackson*, 11 Q. B. Div. 627; and see *Kewrick v. Lawrence*, 25 Q. B. D. 99.

a separate form shall revert to the author for the remainder of the term given by this Act: Provided always, that during the term of twenty-eight years the said proprietor, projector, publisher, or conductor shall not publish any such essay, article, or portion separately, or singly, without the consent previously obtained of the author thereof, or his assigns: Provided also, that nothing herein contained shall alter or affect the right of any person who shall have been or who shall be so employed, as aforesaid, to publish any such his composition in a separate form, who by any contract expressed or implied may have reserved, or may hereafter reserve to himself such right, but every author reserving, retaining, or having such right, shall be entitled to the copyright in such composition when published in a separate form, according to this Act, without prejudice to the right of such proprietor, projector, publisher, or conductor as aforesaid."

Proviso for authors who have preserved the right of publishing their articles in a separate form.

Accordingly it has been held (s) that the proprietor of a periodical who employs a gentleman to write a given article or series of articles, or reports, expressly for the purpose of publication therein, acquires the copyright in such article, and may maintain an action for piracy thereof; the fact of employment and payment being *prima facie* evidence that one of the terms was that the copyright should belong to the employer.

Sweet v. Benning.

The proprietor of a trade directory (t) employed the defendant to compose headings under which advertisements of various trades were collected. There was no express agreement as to whether the proprietor or the defendant was to have the copyright in these headings, but from the nature of the business, the Court drew the inference that the defendant composed the headings on the terms that the copyright should be in his employer. But where an author was employed by a publisher to write articles in an encyclopædia, Joyce, J., said that he

Lamb v. Evans.

(s) *Sweet v. Benning*, 16 C. B. 459; *Stevens v. Benning*, 24 L. J., Ch. 153; *Grace v. Newman*, 19 Eq. 623.

(t) *Lamb v. Evans*, (1893) 1 Ch. 218.

could see no special circumstances, either in the nature of the publication or in the terms of the employment to show that the copyright was to belong to the publisher, and he held that it belonged to the author (*u*).

Composer of
music em-
ployed by
manager of a
theatre.

In the following case (*v*) it was held that a composer of music could not sue the person who employed him to compose it as a part of a dramatic piece, for performing it without his consent in writing, contrary to the Dramatic Copyright Act, 3 & 4 Will. 4, c. 15, and the Copyright Act, 1842, 5 & 6 Vict. c. 45.

Hatton v.
Kean.

The plaintiff, a composer of music, was employed by the defendant, who was a manager of a theatre, to compose, and did compose, a certain musical composition for the purpose of being performed at, during and as part of a representation of Shakespeare's play "Much Ado about Nothing," and alleged, in his declaration, that he had the sole liberty and right of performing the said composition; and that defendant, without his consent in writing, caused it to be performed and represented at the defendant's theatre contrary to the Dramatic Copyright Act and the Copyright Act, 1842. The defendant pleaded that the musical composition was part of a dramatic piece adapted to the stage by the defendant, with the aid of scenery, dresses, the alleged composition, and other music and accompaniments; the general design of which representation was formed by the defendant, who employed the plaintiff, for reward paid to him, to compose the said musical composition, as part of the said representation and dramatic piece, on the terms that the said musical composition should become part of such dramatic piece, and that the defendant should have the sole liberty of representing and performing the said musical composition with the said dramatic piece, and as part thereof; and that the said musical composition was composed by the plaintiff under the said employment,

(*u*) *Aflalo v. Lawrence*, 85 L. T. Rep. 342.

(*v*) *Hatton v. Kean*, 7 C. B., N. S. 268.

and on the terms, &c. aforesaid. It was held on demurrer that the plea was a good answer to the action; and Erle, C. J., said, "I found my opinion entirely on the facts stated in the plea, and because no decision has yet been given on such circumstances as those subsisting between these parties. Looking at all the facts as disclosed in the pleadings, it seems to me that the defendant was substantially the author and designer of this dramatic piece. The capital and skill he employed in producing it and bringing it out were considerable, while the plaintiff's duty was small and confined to one subordinate department. The music he furnished was, as it seems to me, composed under the employment, and by direction of, the defendant; was paid for by him, and became his property, and therefore he violated no contract by using it. The very terms of the engagement lead me to this judgment; were it otherwise, a single successful production might induce the plaintiff to withdraw his music, to the great detriment of the defendant"; and Byles, J., added, "This falls within the class of cases in which the Court, in *Shepherd v. Conquest (w)*, abstained from expressing any opinion."

Hutton v. Kean.

OF THE ACTION BY A MASTER FOR PERSONAL INJURIES TO HIS SERVANT.

Numerous instances are to be found in the books of actions by masters for personal injuries to their servants; whether caused by an assault (*x*) or by battery (*y*), or by negligent driving (*z*), or by a ferocious dog (*a*); and in one case a man recovered damages in an action against a person for negligently entrusting a loaded gun to a mulatto girl, who discharged it against the plaintiff's son and servant (*b*). This action also depends on the loss of

Loss of service.

(*w*) *Ante*, p. 136.

(*x*) *Gilbert v. Schwenck*, 14 M. & W. 488.

(*y*) *Duel v. Harding*, Str. 595.

(*z*) *Hall v. Hollander*, 4 B. & C. 660; *Martinez v. Gerber*, 3 M. & G. 88; *Gough v. Bryan*, 2 M. & W. 770.

(*a*) *Hodsoll v. Stallebrass*, 11 A. & E. 301; *Lewis v. Fog*, Str. 944.

(*b*) *Dixon v. Bell*, 1 Stark. 287; 5 M. & S. 198.

service (*c*), but a service *de facto* is sufficient to support the action (*d*).

It is in this form of action that a parent usually proceeds to recover damages for injuries sustained by his children through the wrongful acts of the defendant, for in such cases a parent cannot recover any damages for his wounded feelings, but only for the loss of service he has sustained (*e*). Where, therefore (*f*), the defendant drove his carriage against the plaintiff's son, who was an infant only two years and a half old, and the plaintiff brought an action of trespass, *per quod servitium amisit*, against the defendant: upon its being objected that the child was not competent to perform any act of service by reason of its tender age, the plaintiff was nonsuited, and the nonsuit was afterwards held right by the Court: Bayley, J., observing, "The authorities upon this point are all one way." If, however, there is a capacity to serve, very slight evidence is sufficient to support the allegation of service (*g*); and, indeed, in modern cases, where there has been a capacity to serve, the tendency of the Courts has been to infer service from residence with the parent, without proof of actual service (*h*). Where the child injured is of such tender age as to render it doubtful whether service could be presumed, the best way to avoid the difficulty is to sue in the name of the child: a course against which the objection which formerly

Hall v.
Hollander.
Incapacity to
serve.

Capacity to
serve.

Action by
servant.

(*c*) *Robert Mary's case*, 9 Rep. 113 *b*; and *cas. cit. ante*, p. 124, note (*s*); *Rosier v. Sawkins*, Holt, 160.

(*d*) 11 Hen. 4, 2 F. N. B. 91, G., note; see *Martinez v. Gerber*, 3 M. & G. 88; *Evans v. Walton*, *ante*, p. 129.

(*e*) *Flemington v. Smithers*, 2 C. & P. 292. Mark the difference in this respect between this action and that for seduction, *post*, p. 144. Formerly, whilst it was petit treason for a servant to kill his master (25 Edw. 3, st. 5, c. 2; see now 9 Geo. 4, c. 31, s. 2; 24 & 25 Vict. c. 100, s. 8), parricide was held not to be petit treason unless the child served the father or mother for wages, or meat, drink, or apparel; 3 Inst. 20.

(*f*) *Hall v. Hollander*, 4 B. & C. 660.

(*g*) In *Dixon v. Bell*, 1 Stark. 287; 5 M. & S. 198, the plaintiff recovered for an injury to his son, eight or nine years old, without proof of actual service.

(*h*) *Jones v. Brown*, Peake, 233; *Maunder v. Fenn*, M. & M. 323; *Torrence v. Gibbins*, 5 Q. B. 300.

prevailed (*i*)—viz., that the adoption of it excluded the child's testimony, would not now apply (*j*).

It has, however, been held in one case (*k*) in which a master sued a railway company for injuries to his servant while being carried on the defendant's railway that the defendants were entitled to succeed. But it has been pointed out (*l*) that that case was decided on demurrer to a declaration in which the plaintiff was suing upon a breach of a contract, not upon a tort (*m*).

Negligence in carrying a servant.

Formerly, where the action lay, the form of action might be either trespass or case, according as the plaintiff wished to recover damages for the direct or consequential injury (*n*). It was no objection to an action on the case by the master that the servant himself had already recovered damages for the injury he had sustained; for the injury to the servant and that to the master are collateral, not consequent upon each other (*o*).

Form of action.

Recovery by servant no answer by master.

If the servant be killed on the spot, there is authority (*p*) for saying that no action will lie at the suit of the master.

Death of servant.

(*i*) *Duel v. Harding*, Str. 595; *Lewis v. Fog*, *ibid.* 944; *Cock v. Wortham*, *ibid.* 1054; Selw. N. P. 1114.

(*j*) 14 & 15 Vict. c. 99, s. 2.

(*k*) *Alton v. Midland Railway Co.*, 19 C. B., N. S. 213.

(*l*) *Taylor v. Manchester, Sheffield, and Lincolnshire Railway Co.*, (1895) 1 Q. B. 134.

(*m*) The right of a passenger by railway to be carried safely does not depend on his having made a contract, but the fact of his being a passenger casts a duty on the company to carry him safely: *Foulkes v. Metropolitan District Railway Co.*, 5 C. P. D. 157. So a master was held to have a good cause of action where his servant was injured by the negligence of a railway company other than that with whom the contract of carriage was made: *Berringer v. Great Eastern Railway Co.*, 4 C. P. D. 163. It has been held by the Court of Queen's Bench that a master could not maintain an action for the loss of his luggage which had been received by the defendants from his servant to be carried by them as part of the servant's ordinary luggage as a passenger on their railway: *Becher v. Great Eastern Railway Co.*, L. R., 5 Q. B. 241; but it has been since decided by the Court of Appeal where the plaintiff's servant took a ticket and travelled with ordinary luggage on the defendants' railway, and through the negligence of the defendants' servant the luggage was overturned and damaged so that a suit of livery which was the property of the plaintiff was destroyed, that the defendants were liable to the plaintiff for the tortious act of their servant in injuring the plaintiff's property: *Menz v. Great Eastern Railway Co.*, (1895) 2 Q. B. 387.

(*n*) *Chamberlain v. Hazlewood*, 5 M. & W. 515.

(*o*) *Savil v. Kirby*, 10 Mod. 386; *Edmondson v. Machell*, 2 T. R. 4.

(*p*) *Osborn v. Gillett*, L. R., 8 Ex. 88. But see the judgment of

Felony,
how far
actionable.

Moreover, in any case in which the act or default of the person killing or injuring the servant amounts to a felony the master may be hindered in suing such person by the ancient (*q*) principle of law, resting upon public policy and expediency, that where a civil claim is founded upon a matter which might be the subject of an indictment for felony, the person seeking to enforce it should prosecute for the criminal offence before he can recover in the civil action.

In one case (*r*) Blackburn, J., suggested that the Court of its own motion might order such an action to be stayed till public justice has been satisfied, but the difficulties of this and other suggested methods whereby effect might be given to this principle of the law were discussed by Bramwell, L. J. (*s*), without arriving at any definite conclusion.

Damages.

In this action, the master may recover damages for the loss of service, not only before action brought, but afterwards, down to the time when it appears by the evidence the disability to serve may be expected to cease (*t*); and he may also recover the amount of the surgeon's bill, although it has not been paid, but no physician's fees, if not paid (*u*).

OF THE ACTION FOR SEDUCTION.

This action also depends upon the existence of the relationship of master and servant between the plaintiff

Bramwell, B., who dissented from the rest of the Court (Kelly, C. B., and Pigott, B.).

(*q*) *Marsh v. Keating*, 1 Bing. N. C. 198; *White v. Spettigue*, 13 M. & W. 603, and the cases collected in *Midland Counties Insurance Co. v. Smith*, 50 L. J., Q. B. 329; *Osborn v. Gillett*, L. R., 8 Ex. 88.

(*r*) *Wells v. Abrahamson*, L. R., 7 Q. B. 544. See the Irish case of *S. F. S.*, 16 Cox, C. C. 566.

(*s*) *Ex parte Hall, Re Shepherd*, 10 Ch. D. 667. In *Appleby v. Franklin*, 17 Q. B. D. 23, the Court refused to strike out a paragraph in the claim as disclosing a felony for which the defendant ought to have been prosecuted, inasmuch as the plaintiff was not the person on whom the felonious act had been committed and had no duty to prosecute.

(*t*) *Hodgkiss v. Stallebrass*, 9 C. & P. 63; 11 A. & E. 301.

(*u*) *Dixon v. Bell*, 1 Stark. 287.

and the person seduced (*r*), and it is the only method in which a parent can recover damages against the seducer of his daughter.

In one respect this action is similar to that lastly treated of, viz., that as it is the invasion of the legal right of a master to the services of his servant, that gives him a right of action for assaults, &c., committed upon his servant, so it is the invasion of the same legal right, and no other, which gives a father a right of action against the seducer of his daughter (*u*).

Loss of service.

But there is this important practical difference between the two actions, that in the action for assaulting, &c., a servant or child, the plaintiff cannot recover any compensation for the injury his feelings may have sustained; whilst in the action for seduction he may do so (*x*). And this, in practice, is the chief object of the action for seduction, in which liberal damages are usually given, and the Courts are disinclined to grant new trials merely on the ground of excess in that respect (*y*). The custom of allowing the jury, in ascertaining the amount of damages in this action, to have regard not merely to the injury sustained by the loss of service, but also to the wounded feelings of the plaintiff, has arisen from a laudable desire to suppress the vice of seduction, against which the criminal law has not provided any punishment; though it may be fairly doubted how far it has succeeded in accomplishing the desired object (*z*). The

Damages for injury to feelings.

(*r*) *Grinnell v. Wells*, 7 M. & G. 1033; *Eager v. Grimwood*, 1 Exc. 61; see *Fores v. Wilson*, Peake, 55.

(*u*) *Per* Tindal, C. J., in *Grinnell v. Wells*, *ubi supra*. See further *post*, p. 147. It is the same in America: *Bartley v. Richtmyer*, 4 Comst. 38; *Dain v. Wycoff*, 3 Seld. Rep. 191; *Ingerson v. Miller* (1866), 47 Barb. 47.

(*x*) In *Dodd v. Norris*, 3 Camp. 519, Lord Ellenborough expressed an opinion that it was necessary to watch that this anomaly should not be carried further, and that the original scope of the action should not be entirely lost sight of.

(*y*) *Tullidge v. Wade*, 3 Wils. 18; *Edmondson v. Mackell*, 2 T. R. 4; *Bennett v. Alcott*, 2 T. R. 166; and see *Duberley v. Gunning*, 4 T. R. 651; *Elliott v. Nicklin*, 5 Price, 641; *Smith v. Woodfine*, 1 C. B., N. S. 660; *Berry v. Da Costa*, L. R., 1 C. P. 331.

(*z*) *Selw. N. P.* 1115; *Southernwood v. Ramsden*, II. T. 1805; *Chambers v. Irwin*, *ibid. cit.*; *Irwin v. Dearman*, 11 East, 23; and see *per* Tindal, C. J., in *Grinnell v. Wells*, 7 M. & G. 1043.

custom, however, has been now so long established, that it can only be altered by the legislature.

Scatter.

There is also this distinction to be observed between this action for seduction and that for enticing away and harbouring apprentices or servants (the gist of which also, as we have seen, is the loss of service), that in the former it is not necessary to prove that the defendant *knew* the person seduced to be the plaintiff's servant, whilst in the latter it is necessary to do so (*a*).

By whom this action may be brought.

The gist of this action being loss of service, it follows that it may be brought by any one who has sustained that loss, whether he be merely the master and not a relative (*b*), or the parent, brother (*c*), or aunt (*d*) of the person seduced. And, in one instance, a person who had adopted a friend's daughter was allowed to bring an action for her seduction (*e*). But the right of action for an injury of this sort does not pass to the trustee of a master who has become bankrupt, as he has no right to make a profit of a man's wounded feelings (*f*).

No objection that servant of full age.

It is no objection to this action by the master, that the party seduced was of age at the time of the seduction (*g*), nor that she was a married woman, if living with her father, and acting as his servant; for it is not competent to a wrongdoer to set up the rights of the husband as an answer to the action if he do not interfere (*h*).

(*a*) *Per* Lord Kenyon, in *Fores v. Wilson*, Peake, 55; and see *Winsmore v. Greenbank*, Willes, 577.

(*b*) *Fores v. Wilson*, *ubi supra*.

(*c*) *Howard v. Crowther*, 8 M. & W. 601.

(*d*) *Edmondson v. Machell*, 2 T. R. 4.

(*e*) *Iruin v. Dearman*, 11 East, 23. The American Courts go further than the English in making out the constructive relation of master and servant, and hold that it may exist for the purposes of this action, although the daughter was in the service of a third person at the time of the seduction, provided the case be such that the father then had a legal right to her services, and might have commanded them at pleasure. See *Bartley v. Richtmyer*, 4 Comst. 38 (1850); *Mulvehall v. Milward*, 1 Kernan's Rep. 343 (1854).

(*f*) *Howard v. Crowther*, 8 M. & W. 601; and see *Beckham v. Drake*, 2 Ho. Lords Cas. 579. See also *Hodgson v. Sabney*, L. R., 1 Ex. 313, as to splitting cause of action in the case of injury to a bankrupt's estate, with special damage to himself, and *Ex parte Fane, Re Wilson*, 8 Ch. D. 364.

(*g*) *Bennett v. Alcott*, 2 T. R. 166; *Tullidge v. Wade*, 3 Wils. 18.

(*h*) *Harper v. Luffkin*, 7 B. & C. 387.

To support this action an actual (i) or constructive relation of master and servant and a corresponding loss of service are essential. The constructive relation of master and servant arises from the parental relation of father and child, and gives the father, as natural guardian, a right to the services of his child while the child is under age.

Daughter in constructive service of her father.

It seems that a father cannot rely on any constructive relation of this sort while his daughter is in the actual service of another person. This is so even in a case where the daughter intends to return to her father's house at the end of her term of service (j). So, too, a daughter was held (k) not to be in the constructive service of her mother in a case where, during her leisure hours while under the roof of her master, she did needlework for her mother with her mistress's express consent; nor in a case (l) where the defendant in whose service the daughter was engaged allowed her to go home once a week for an afternoon and evening to assist in household duties. And again it was held that a mother could not recover in a case (m) where her daughter who was in service as a governess was seduced while on a three days' visit, with her employer's permission, at her mother's house.

But as soon as a girl under age ceases to be under the control of a real master and intends to return to her father's house, he has a right to her services; and therefore where a girl, having left her situation, was seduced on her way home to her father's house, it was held (n) that she was in the constructive service of her father, and he might sue for her seduction.

A mere temporary absence, however, from her father's house, as if on a visit to a friend, if not in the actual

Temporary absence from home.

(i) A binding contract of service is not necessary: *Harper v. Luffkin*, 7 B. & C. 387.

(j) *Dean v. Peel*, 5 East, 46; *Harris v. Butler*, 2 M. & W. 539.

(k) *Thompson v. Ross*, 5 H. & N. 16.

(l) *Whitbourne v. Williams*, (1901) 2 K. B. 722.

(m) *Hedges v. Tagg*, L. R., 7 Exc. 283.

(n) *Terry v. Hutchinson*, L. R., 3 Q. B. 599; 37 L. J., Q. B. 257; and see *Gladney v. Murphy*, 26 L. R., Ir. 651.

Serving father
part of the
day.

Colourable
hiring.

Nor can father
sue where his
daughter con-
fined at his
house,
if seduced
whilst in
service.
Child not
defendant's.

Abandonment
after seduc-
tion.

service of another, would not defeat the action (*o*). Therefore, where the plaintiff's daughter *lived with* her brother, but went every day to her father's house to do all the household business as when she resided with him, and he kept no other servant; it was held that he might maintain an action for his daughter's seduction (*p*). And where a girl was bound to serve the defendant eleven hours a day as servant in husbandry, but slept at her father's house, and after her day's work performed service for her father; it was held that there was sufficient loss of service to enable the father to maintain the action (*q*). And where the defendant hired the plaintiff's daughter as his servant, with a view to obtain possession of her person in order to seduce her, it was held that such a hiring would not defeat an action brought by her father, as it was merely a colourable hiring (*r*).

Again, if a girl be seduced whilst out in service, and return to her father's house in a state of pregnancy, and he support her during and after her confinement, he cannot maintain any action for the seduction, as *he did not thereby* lose her services, she being in the service of another (*s*). And so, if the jury find that the child of which the plaintiff's daughter was delivered was not the defendant's, although he was proved to have had connexion with her, the plaintiff can sustain no action against the defendant, as he has sustained no loss of service by *the defendant's* act (*t*). And it has been questioned whether a parent can maintain this action where the loss of service arose

(*o*) *Per* Parke, B., in *Blaymore v. Haley*, 6 M. & W. 55.

(*p*) *Mann v. Barrett*, 6 Esp. 32.

(*q*) *Rest v. Fox*, 32 L. J., Q. B. 386.

(*r*) *Speight v. Oliver*, 2 Stark. 493; *Griffiths v. Tietgen*, 15 C. B. 314. In *R. v. Delaval*, 3 Burr. 1134, a criminal information was granted for fraudulently assigning a female apprentice for the purpose of prostitution. And see the American cases, *supra*, note (*u*), and *Evans v. Walton*, L. R., 2 C. P. 615.

(*s*) *Darves v. Williams*, 10 Q. B. 725. In *Joseph v. Cavander*, Winton Summ. Ass. 1834 (cited in Rose, on Ev.), the action was held to lie, though the daughter had not actually been confined before action brought, and the plaintiff had voluntarily turned her out of his house upon discovering her pregnancy.

(*t*) *Koger v. Greenwood*, 1 Exc. 61.

from distress of mind consequent upon abandonment after seduction, it being conceived that the damage was too remote (*u*).

Where this action is brought by a parent for the seduction of a daughter who resides with him, evidence of very slight acts of service (*r*), such as milking cows (*u*), making tea (*x*), and the like, has been held sufficient to prove the allegation of loss of service. Nay, the Courts are disposed to *infer* service from residence with the parents, where there is a capacity to serve (*y*). Whether or not the same inference could be drawn in the case of one standing *in loco parentis* is not settled.

Loss of service of daughter residing with parent.

But a woman of thirty-two, having a separate establishment of her own, and not being a subordinate member of her father's family, though she conferred benefits on her father's family, was held not to render him services for the loss of which an action could be maintained (*z*).

It would seem, however, that mere seduction, unattended with pregnancy or other ill effects whereby the daughter is disqualified at least in some trifling degree from performing such service as a parent might require, would not give a right of action—there would be no *loss of service* (*a*).

Seduction without loss of service.

The action for seduction cannot, except by consent, be brought in the County Court (*b*).

The daughter or servant, when called as a witness, can only be asked as to circumstances occurring before and *immediately after* her connexion with the defendant, to show that it was against her consent (*c*). And she is not bound to answer, on cross-examination, whether before

Evidence of the servant.

Cross-examination.

(*u*) *Boyle v. Brandon*, 13 M. & W. 738.

(*v*) *Mansell v. Thompson*, 2 C. & P. 303; *Holloway v. Abell*, 7 C. & P. 528.

(*w*) *Bennett v. Alcott*, 2 T. R. 166.

(*x*) *Carr v. Clarke*, 2 Ch. Rep. 260.

(*y*) *Maunder v. Fenn*, M. & M. 323; *Torrence v. Gibbins*, 5 Q. B. 300; see *Jones v. Brown*, Peake, 233; and *per* Lord Wensleydale, in *Harris v. Butler*, 2 M. & W. 539.

(*z*) *Manley v. Field*, 29 L. J., C. P. 79.

(*a*) See the American case of *Ingerson v. Miller*, 47 Barb. 47 (1866).

(*b*) 51 & 52 Vict. c. 43, ss. 56 and 64.

(*c*) *Colyer v. Mayne*, 2 Carr. & K. 1011.

her acquaintance with the defendant she had not been criminal with other men (*d*). And where she has been cross-examined at length as to circumstances of extreme indelicacy and great levity of conduct in submitting to the defendant's embraces, those circumstances must be explained, if capable of explanation, on re-examination, for the plaintiff cannot, in answer, call witnesses to her general character (*e*). Though, in one case, where the cross-examination went to show that the plaintiff's daughter had conducted herself immodestly towards the defendant before her seduction, and that she kept improper company, witnesses were allowed to be called, on the part of the plaintiff, to prove the general good character and modest deportment of the daughter, and the general respectability of the family (*f*). The plaintiff cannot give evidence of the *general* good character of the person seduced, except in answer to evidence of *general* bad character. And therefore, where evidence is given, of a specific breach of chastity, the plaintiff is restricted to disproving that specific act (*g*). Nor can evidence be admitted on the part of the plaintiff to show that the defendant accomplished the seduction by means of a promise of marriage (*h*); at least not *directly* for the purpose of increasing damages, though such evidence may be given *indirectly*, and is frequently received for the purpose of vindicating the girl's character (*i*). Declarations of the defendant's wife, tending to show that she aided and colluded with the defendant in seducing the plaintiff's daughter, have been admitted in evidence in aggravation of damages (*j*).

Evidence of
general good
character.

Promise of
marriage.

(*d*) *Dodd v. Norris*, 3 Campb. 519.

(*e*) *Dodd v. Norris*, *ubi supra*; *Bamfield v. Massey*, 1 Campb. 460.

(*f*) *Bate v. Hill*, 1 C. & P. 100. In the note at the end of the case it is said that the course adopted in that case is more conducive to the ends of justice than that adopted in *Dodd v. Norris*. And see 1 Ph. on Ev. 468.

(*g*) *Bamfield v. Massey*, 1 Campb. 460.

(*h*) *Dodd v. Norris*, 3 Campb. 519.

(*i*) Per Garrow, B. (in *Elliot v. Nicklin*, 5 Price, 647), who was counsel in *Dodd v. Norris*. And see *Tallidge v. Wade*, 3 Wils. 18; *Capron v. Richmond*, Exeter Spr. Ass. 1831; Rose, on Ev.

(*j*) *Knobbs v. Compaigne*, Winton Summ. Ass. 1834; Rose, on Ev.

On the part of the defendant evidence may be given, Evidence for
in mitigation of damages, not only of the general bad the defence.
character of the person alleged to have been seduced, but
also of particular acts of unchastity on her part (*k*). But
he cannot call witnesses to prove that she has talked of
another person than the defendant as her seducer and
the father of her child, unless she be first asked in cross-
examination whether she ever used those expressions (*l*).
Such evidence, however, might be admissible to show
general misconduct and frequent use of loose language (*m*).

The plaintiff may recover damages for the injury which Damages.
his feelings have sustained in addition to the actual
expense incurred by loss of service and payment of
doctor's bills (*n*). And, in one case, Lord Eldon told the
jury that, in estimating the damage sustained by the
plaintiff, they might look upon her as a parent losing the
comfort as well as the service of her daughter, in whose
virtue she could feel no consolation; and as the parent
of other children whose morals might be corrupted by
her example (*o*). But it would seem to be the better
opinion that the plaintiff cannot aggravate the damages
by proof of the wealth of the defendant (*p*).

(*k*) *Ferry v. Watkins*, 7 C. & P. 308; *R. v. Martin*, 6 C. & P. 562; *R. v. Robins*, 2 M. & Rob. 512. But in 16 Q. B. 178, Erle, J., said he knew no instance of evidence of general bad character being admitted in actions for seduction.

(*l*) *Carpenter v. Wall*, 11 A. & E. 803. In *Andrews v. Askey*, 8 C. & P. 7, Tindal, C. J., allowed her to be recalled and re-examined on this point.

(*m*) *Carpenter v. Wall*, *ubi supra*.

(*n*) *Ante*, p. 145; *Andrews v. Askey*, 8 C. & P. 7; *Chambers v. Irwin*, *Southernwood v. Ramsden*, Selw. N. P. 1127 (12th ed.). As to doctor's bills, see *Dixon v. Bell*, 1 Stark. 287.

(*o*) *Bedford v. M'Kowl*, 3 Esp. 119.

(*p*) *Jones v. Beddington*, 6 C. & P. 589; *Dain v. Wygeoff*, 3 Seld. Rep. 191. In *Berry v. Du Costa*, L. R., 1 C. P. 331, heavy damages were given in an action for breach of promise of marriage, accompanied by seduction. See also *Hodsoll v. Taylor*, L. R., 9 Q. B. 79.

CHAPTER IV.

THE DUTIES OF THE MASTER TO THE SERVANT AND THE RIGHTS AND REMEDIES OF THE SERVANT TO ENFORCE THE PERFORMANCE OF THEM.

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OF THE MASTER'S DUTY TO RECEIVE THE SERVANT INTO HIS SERVICE, AND RETAIN HIM ; AND THE SERVANT'S REMEDIES FOR BREACH OF SUCH DUTIES.

Duty of master to receive servant into his service.

Action for refusal.

Clarke v. Allatt.

It is obviously the duty of every man who has engaged another person as a servant, to receive such person into his service, and if he refuse to do so without any good reason for his refusal, such person may maintain an action against him for that breach of contract (*a*). Thus, where the defendant agreed to take the plaintiff, who

(*a*) *Brucevillie v. Heald*, 1 B. & Ald. 722 ; *Illegg v. Kent*, 6 Bing. 614. As to the master's duty to find work for the servant, see Chap. II.

was a shepherd, into his service at certain wages for the then next lambing season, for five weeks next ensuing after the 28th February then next, but afterwards refused to allow him to enter into his service, the plaintiff recovered damages in an action brought for such breach of contract on the part of the defendant (*b*). To sustain this action, however, it would (*c*) of course be necessary to prove a legally binding contract of hiring and service. It is obvious that what would be a good reason for *discharging* a servant would be an equally good reason for refusing to receive him into one's service, after having engaged to do so. But it is no answer to an action for not performing an agreement to employ the plaintiff, that he has entered into a conspiracy to depart from the agreement, unless the conspiracy has been acted upon (*d*).

Clarke v. Allatt.

Conspiracy to depart from agreement, no answer, unless acted on.

And where a person has entered into a binding agreement to take another into his service on a future day, but before that day arrives, announces his intention (*e*) not to do so, he is entitled to be believed, and the servant may thereupon *immediately* bring an action against him, and is not bound to wait till the day arrives to see if the master will change his mind. In a case (*f*), therefore, in which a gentleman in April engaged a courier to accompany him on a tour for three months on the continent of Europe, to commence on the 1st of June, but in May wrote to say he had changed his mind, and declined the courier's services, and the courier thereupon in May commenced an action against him, and afterwards,

Action may be brought before the day for commencement of service.

Hochster v. De la Tour.

(*b*) *Clarke v. Allatt*, 4 C. B. 335.

(*c*) *Bracegirdle v. Heald*, 1 B. & Ald. 722. As to the requisites of the contract, see *ante*, Chap. II.

(*d*) *Hemingway v. Hamilton*, 4 M. & W. 115. See the pleadings in *Mercer v. Whall*, 5 Q. B. 447.

(*e*) It would be enough if the action of the master were such that the servant would be entitled to conclude that the master no longer intended to be bound by his contract: *Rhymney Railway Co. v. Brecon & Merthyr Tydfil Railway Co.*, 83 L. T. Rep. 111.

(*f*) *Hochster v. De la Tour*, 2 E. & B. 678; *Avery v. Bowden*, 6 E. & B. 953; *Danube and Black Sea Railway, &c. Co. v. Xenos*, 31 L. J., C. P. 84, 284; *Frost v. Knight*, L. R., 7 Ex. 111; *Johnstone v. Milling*, 16 Q. B. D. 460. And see as to damages, *Roper v. Johnson*, L. R., 8 C. P. 167.

*Hochster v.
De la Tour.*

before the 1st of June, obtained another engagement, on equally good terms, but not commencing till 4th of July; it was held that the courier was entitled to recover, although it was objected, and very powerfully contended, that the plaintiff was bound to remain ready and willing to perform the contract till the day when the actual employment was to begin, and that there could be no breach of the contract before the 1st of June. And Lord Campbell, C. J., said: "The man who wrongfully renounces a contract into which he has deliberately entered, cannot justly complain if he is immediately sued for a compensation in damages by the man whom he has injured; and it seems reasonable to allow an option to the injured party either to sue immediately or to wait till the time when the act was to be done, still holding it as prospectively binding for the exercise of this option, which may be advantageous to the innocent party, and cannot be prejudicial to the wrongdoer. An argument against the action before the 1st of June is urged from the difficulty of calculating the damages; but this argument is equally strong against an action before the 1st of September, when the three months would expire. In either case the jury, in assessing the damages, would be justified in looking to all that had happened, or was likely to happen, to increase or mitigate the loss of the plaintiff down to the day of trial."

Damages.

If not brought
and servant
incapacitated,
master may
rescind.

If the servant do not act upon the master's announced renunciation of the contract, and before the day arrives for the commencement of the service, becomes either by the act of God, *vis major*, or his own misconduct or misfortune, incompetent or unable to perform his part of it, the master would be at liberty to avail himself of those circumstances to rescind the contract, and could not afterwards be sued for a breach of it (*g*).

Duty of master
to retain
servant.

It is also the duty of a master to retain the servant

g *Atney v. Borden*, 6 E. & B. 953; *Reed v. Huskins*, 6 E. & B. 953; *Barwick v. Buha*, 26 L. J., C. P. 280; *Frost v. Knight*, L. R., 7 Exc. 111; *Johnstone v. Millington*, 16 Q. B. D. 460.

during the whole time that he has contracted to do so; and if he dismiss the servant before the expiration of that period without lawful cause (*h*), the servant may maintain an action against him for such wrongful dismissal.

Where a servant is dismissed by his master during the period of service agreed upon, the Court will not grant an injunction (*j*) to restrain the master from so doing. In a case (*k*), therefore, in which Lord Cranworth, V.-C., granted an injunction to restrain a lucifer match manufacturer from discharging his manager, who was appointed under a written agreement, Lord Truro, L. C., on appeal, dismissed the order, saying, "He did not recollect any instance of any attempt on the part of a Court of equity to compel the employer to retain the servant, agent, or manager, and not to forbear to leave him to his remedy at law. Consider," added his lordship, "what the effect would be; how is it possible for an employer or an agent to go on in the intimate connexion which such a contract is calculated to create? They are to be on the same premises, acting in the management of the same business, in this case, and if there is mutual dissatisfaction, well or ill-founded, it is perfectly clear that a management conducted under such circumstances, must tend very much to the prejudice of the concern—in this case, I think, particularly."

Court will not grant injunction to compel master to retain servant (*i*).

Stocker v. Brockelbank.

Similar reasons were given by Lord Justice Knight

(*h*) See the preceding Chapter as to what causes will justify the dismissal of a servant.

(*i*) Or to discharge an apprentice: *Webb v. England*, 29 Beav. 44.

(*j*) See *ante*, p. 99. The Court will not grant specific performance of a contract of agency: *Chincock v. Sainsbury*, 30 L. J., Ch. 409; nor of a contract of partnership: *Scott v. Raymont*, 7 Eq. 112. Where the master is a trustee, however, as in the case of trustees of a school, the Court will sometimes interfere: *Willis v. Child*, 13 Beav. 117, where Lord Langdale, M. R., granted an injunction to restrain the trustees of a charity school from discharging the master; and see *Doe v. Willis*, 5 Exc. 894; *Daugars v. Rivaz*, 29 L. J., Ch. 685; *Hayman v. Governing Body of Rugby School*, 18 Eq. 28; *Rendall v. Blair*, 45 Ch. D. 139; *Fisher v. Jackson*, (1891) 2 Ch. 84.

(*k*) *Stocker v. Brockelbank*, 20 L. J., Ch. 408; and see *Rigby v. Connol*, 14 Ch. D. 482.

Bruce, in refusing an injunction to restrain a railway company from discharging a contractor (1).

*Johnson v.
Shrewsbury,
&c. Railway
Company.*

The nature of the service to be rendered in that case may (without entering into particulars) be described in the words of the first half of the fifth section of the contract, viz., "that the said contractors will from time to time at all times during the term of this contract run and work all the trains of the railway company, and provide, for the purposes of this contract, a sufficient number of efficient foremen, mechanics, engine-drivers, firemen, cleaners, store-keepers and other persons, and the requisite coke and firewood, oil, tallow, &c. and other materials of the best quality." And Knight Bruce, L. J., said, "We are asked to compel one person to employ, against his will, another as his confidential servant, for duties with respect to the due performance of which the utmost confidence is required. Let him be one of the best and most competent persons that ever lived, still, if the two do not agree, and good people do not always agree, enormous mischief may be done. A man may have one of the best domestic servants, he may have a valet whose arrangement of clothes is faultless, a coachman whose driving is excellent, a cook whose performances are perfect, and yet he may not have confidence in him: and while on the one hand all that the servant requires or wishes (and that reasonably enough) is money, you are on the other hand to destroy the comfort of a man's existence, for a period of years, by compelling him to have constantly about him, in a confidential situation, one to whom he objects. If that be so in private life, how important do these considerations become when connected with the performance of such duties—duties to society—as are incumbent upon the directors of a company like this."

*Ogden v.
Furnick.*

And upon similar principles, where the defendant agreed to grant a lease to the plaintiff of a wharf and

(1) *Johnson v. Shrewsbury and Birmingham Railway Co.*, 3 De G., M. & G. 914; *Chaplin v. North Western Railway Co.*, 5 L. T. N. S. 601.

premises, and the plaintiff agreed to employ the defendant as manager at the wharf at a salary and commission, the agreement providing that the employment should be co-extensive with the tenancy, a specific performance of the contract was refused by the Lords Justices (reversing the decision of the V.-C.), on the ground that the contract was one entire contract and could not be divided, and as they could not enforce performance of the contract for personal services, they could not enforce the rest of the contract which depended upon it (*m*).

Before proceeding to consider the remedies for a servant *wrongfully* discharged, it may here be observed, that where the contract of hiring is determinable by notice or payment of salary (*e.g.*, by a month's notice or payment of a month's salary), and the master discharges the servant at a moment's notice, the servant in such case being discharged rightfully, in accordance with the contract, the amount of salary agreed to be paid in lieu of notice (*e.g.*, a month's salary) becomes a *debt* due from the master to the servant, and may be sued for as such (*n*).

Where contract determinable by notice or payment of wages and servant discharged, wages become a debt from master.

REMEDIES FOR SERVANT WRONGFULLY DISCHARGED.

A servant wrongfully discharged has the two following remedies open to him at law, either of which he may pursue immediately on his discharge (*o*) :—

1. He may treat the contract of hiring and service as *Twofold.*
continuing, and bring a special action against his master for breaking it by discharging him; and

(*m*) *Ogden v. Fossick*, 32 L. J., Ch. 73; *Peto v. Brighton, &c. Railway Co.*, 32 L. J., Ch. 677.

(*n*) *East Anglian Railway Co. v. Lythgoe*, 10 C. B. 726; *Hatton v. Macready*, 2 D. & L. 5.

(*o*) *Pagani v. Gandolfi*, 2 C. & P. 370. It has been stated that a servant wrongfully discharged has his election of *three* remedies, viz., the two spoken of in the text, and also "he may wait till the termination of the period for which he was hired, and may then, *perhaps*, sue for his whole wages in *indebitatus assumpsit*, relying on the doctrine of constructive service." But it seems clear now that this remedy is not open to him: see the cases cited in the note to *Cutter v. Powell*, 2 Sm. L. C. p. 46, 10th edit.

this remedy he may pursue whether his wages are paid up to the period of his discharge or not; or,

2. If his wages are not paid up to the time of his discharge, he may treat the contract of hiring and service as *rescinded*, and sue his master on a *quantum meruit* for the services he has actually rendered (*p*).

Action for
wrongful
discharge
preferable.

The former of these, however, is the remedy more usually adopted, and it is the preferable one, as, in the latter case, the action is founded on an implied contract arising out of *actual* services, and no such contract arises by implication of *law* upon a simple dissolution of a special contract of hiring and service (*q*); and though a jury are at *liberty* to imply such a contract from circumstances (*r*), and probably would in most cases do so, yet they are not *bound* to do so, and could only imply a contract to pay wages for the services *actually rendered*. And, therefore, in the latter form of action, a servant *could* only recover wages up to the time of his discharge. Whilst in the former case the action being founded on a contract, which the law would imply on the part of the master, to indemnify the servant against all such damages as he had sustained by reason of the master's breach of contract in discharging the servant, and not allowing him to perform *his* part of the contract; the servant, if he recovered at all, would recover something *beyond* the amount of wages due at the period of his discharge (*s*).

First, of the
action for
wrongful
discharge.

First. Of the action for wrongful dismissal (*t*). In

(*p*) *Lilley v. Elwin*, 11 Q. B. 755; *Planche v. Colburn*, 8 Bing. 14; *Archard v. Horner*, 3 C. & P. 349.

(*q*) *Lamburn v. Cruden*, 2 M. & G. 253.

(*r*) *Ibid.*; and see *Thomas v. Williams*, 1 A. & E. 685; and *Planche v. Colburn*, 5 C. & P. 61.

(*s*) See further as to damages, *post*, p. 160.

(*t*) In *Sterling v. Matland*, 34 L. J., Q. B. 1, the defendant, who had covenanted that if he "displaced" the plaintiff he would pay him a sum of money, having afterwards transferred the whole of his business to another, was held liable to pay the plaintiff the sum specified. In *Crocker v. Molyneux*, 3 C. & P. 470, it was held, that a servant who was hired at thirty guineas a year and a suit of clothes, and was provided with a livery, but was

this action the servant seeks compensation, not for services he has rendered previous to his discharge, but *for the injury he has sustained* by such discharge in not being allowed to serve and earn the wages agreed upon (*u*).

In order to enable a servant to maintain the action, he must be ready and willing to continue in his master's service at the time he is discharged (*x*). Ready does not imply willing (*y*), but ready and willing implies disposition, capacity and ability (*z*), *i.e.*, not physical ability (*a*), but freedom from any other inconsistent engagement. For if the servant enter the service of another before his discharge, and is thereby disabled from serving his first master in the manner contracted for, he could not be said to be ready to serve him (*b*), and upon a traverse of that averment, his action would be defeated. But although it is necessary that he should be ready and willing and able to serve his master in order to enable him to sue his master for a wrongful discharge, it is not necessary that he should *offer* to do so (*c*), if he can prove his readiness, &c., in any other way. It is obvious, however, that an offer to discharge his duty is the best proof of his readiness to do it. And as readiness and willingness is a matter that is within his own mind only, the master ought at least to have *notice* of it (*d*).

To sustain this action servant must be ready and willing to serve ;

but need not offer ;

should give notice.

dismissed without sufficient cause before the end of the year, could not maintain trover for the livery against his mistress, the property in it being in his mistress, who provided it, and that his remedy was an action for not being allowed to serve to the end of the year and so to become entitled to the livery.

(*u*) *Elderton v. Emmens*, 6 C. B. 187 ; *Beckham v. Drake*, 2 Ho. Lords Cas. 606. The claim being one for damages for breach of contract passes in case of the servant's bankruptcy to his trustee : *Wadling v. Oliphant*, 1 Q. B. D. 145. In *Hoggarth v. Taylor*, L. R., 2 Exc. 105 ; 36 L. J., Exc. 61, it was held that a composition deed containing a release by the creditors from "their respective debts and all claims and demands in respect thereof" was no defence to a claim for damages for wrongful dismissal.

(*x*) See 2 Wms. Saund. 352 *et seq.*, notes to *Peters v. Opie*.

(*y*) *Granger v. Dacre*, 12 M. & W. 431.

(*z*) *De Medina v. Norman*, 9 M. & W. 827 ; *Wallis v. Warren*, 4 Exc. 364 ; *Griffith v. Selby*, 9 Exc. 394.

(*a*) A servant, who is ill, may nevertheless be ready and willing to serve : *Cuckson v. Stones*, 28 L. J., Q. B. 25, *ante*, p. 122.

(*b*) *Spotswood v. Barrow*, 5 Exc. 110.

(*c*) *Wallis v. Warren*, 4 Exc. 361 ; *Lery v. Lord Herbert*, 7 Taunt. 314. But see *Wilkinson v. Gaston*, 9 Q. B. 137.

(*d*) *Doogood v. Rose*, 9 C. B. 137 ; *Armitage v. Insoles*, 14 Q. B. 728.

Damages.

The amount of damages which a servant would recover in an action for wrongful discharge, must, of course, depend on the nature of the contract, and the wages agreed to be paid. In the case of a domestic or menial servant (*e*), or where there was an express agreement for a month's notice (*f*), it might be only a month's wages; but, generally speaking, the amount of damages is a question for the jury to determine. And in a case (*g*) in which a clerk, who had been hired for two years, was wrongfully dismissed after about one quarter's service, and then brought his action for such wrongful dismissal, and the jury awarded him a sum equal to twelve months' salary, the Court of Common Pleas refused to interfere, not considering the damages excessive. Where no specific wages have been agreed upon, the measure of damages is obtained by considering what is the usual rate of wages for the employment contracted for, and what time would be lost before a similar employment could be obtained (*h*). If the servant has been "employed in an equally advantageous manner for the whole of the period for which he was entitled to notice, he cannot claim damages" (*i*). And if he could have got such employment and there was no good reason why he did not take it, the damages he has suffered would be only nominal (*k*).

(*e*) *Forings v. Tisdal*, 1 Exc. 295.

(*f*) *Hartley v. Harman*, 11 A. & E. 798. But where an apprentice was taken for the term of four years subject to his master being entitled to dismiss him at a week's notice, and he was discharged summarily without any notice for misconduct, it was held that, there being no misconduct on his part, the jury were not bound to limit the damages to the value of one week's notice. *Mace v. Jones*, 25 Q. B. D. 107.

(*g*) *Smith v. Thompson*, 8 C. B. 44.

(*h*) Per Erle, J., in *Beckham v. Drake*, 2 Ho. Lords Cns. 606. In *Sowdon v. Mills*, 30 L. J., Q. B. 176, Blackburn, J., said: "If an action is brought by a servant for a wrongful dismissal soon after the dismissal, the judge tells the jury they must speculate on the chance of his getting a new place and base their damages on that. If the action is delayed till the man has got a place, what was matter of speculation before becomes certain then, and the jury calculate accordingly." See also as to damages, *McKean v. Cowley*, 7 L. T., N. S. 828.

(*i*) Per Fry, L. J., in *Ridd v. Explosives Co.*, 19 Q. B. D. 261.

(*k*) *Bruce v. Collier*, (1895) 2 Q. B. 253. In *Beckham v. Drake*, 2 Ho. Lords Cns. 606, Erle, J., said: "When a promise for continuing employment is broken by the master, it is the duty of the servant to use diligence to find another employment."

In a case where (l) the defendants, directors of a mining company in South America, agreed to employ the plaintiff as superintendent of mines for three years, at a salary increasing yearly, and the directors were at liberty to dissolve the agreement at any time on giving the plaintiff twelve months' notice, or paying him twelve months' salary in lieu of such notice, and a reasonable sum towards defraying his expenses to England; and if the plaintiff served the three years, he should be entitled to the expenses attending the return of himself and his family, and the directors dismissed him before the expiration of the second year, without giving him notice or paying him the year's salary: it was held, that he was only entitled to one year's salary from the date of his dismissal, and to his own expenses for his return to England; and the jury having found for these sums only, the Court refused to increase the verdict by adding expenses incurred by the plaintiff for the return of his family, or for the salary which would have accrued from the time of his dismissal to the end of the third year, when his service would have terminated.

Servant employed abroad, expenses of return home.
French v. Brooke.

Contracts of employment sometimes contain a clause providing that if at any time any dispute should arise between the parties in connection with, or regarding their rights and liabilities under, the contract, it shall be referred to arbitration. In such a case where the contract provided that the employers might dismiss the servant if he were guilty of gross misconduct, and the servant, being dismissed on that ground, brought an action for wrongful dismissal, it was held that, the employers being ready and willing to refer the whole matter, the Court had jurisdiction to stay the action, under sect. 4 of the Arbitration Act, 1889 (m). The fact of dismissal is not in itself a refusal by the master to arbitrate, so as to prevent him from insisting on the arbitration clause (n). Where an

Arbitration.

Award of arbitrator is a bar to second action.

(l) *French v. Brooke*, 6 Bing. 354.

(m) *Renshaw v. Queen Anne Residential, &c. Co.*, (1897) 1 Q. B. 662.

(n) *Parry v. Liverpool Malt Co.*, (1900) 1 Q. B. 339, explaining *Davis v. Starr*, 41 Ch. D. 242.

action for wrongful discharge (the declaration in which also contained counts for wages and work and labour, &c.) was referred to an arbitrator, who awarded to the plaintiff a sum of money equivalent in amount to the wages he would have been entitled to receive from the defendant on the day when the action was commenced; but no claim was made before the arbitrator for any compensation in damages for the dismissal, except so far as the special count in the declaration, and the evidence of the employment and dismissal, might amount to such a claim; it was held (*o*) that the plaintiff could not afterwards sustain another action for compensation in damages in consequence of the dismissal from the defendant's employ, before the end of the year, but that the award of the arbitrator was a bar to such action.

When an action for wrongful discharge has been brought, and damages recovered and paid, no fresh action can be brought upon the same agreement (*p*).

It may be convenient to mention here, although seamen's wages are not in general treated of in this book, that the Admiralty Division has jurisdiction to entertain a claim by seamen for wrongful dismissal and consequential damages (*q*).

OF THE COMMON ACTION FOR WAGES BROUGHT BY A SERVANT WRONGFULLY DISCHARGED.

Of the action
for wages
by servant
wrongfully
discharged.

This form of action treats the contract of hiring and service as *rescinded* (*r*). The ground on which a servant wrongfully discharged may support it is one equally applicable to all contracts; viz., that when one party to a contract has absolutely refused to perform something essential on his side of the contract the other party is at

o) *Dunn v. Murray*, 9 B. & C. 780.

p) *Barnsley v. Taylor*, 37 L. J., Q. B. 39.

q) *The Great Eastern*, 36 L. J., Adm. 15; *The Blessing*, 3 P. D. 35.

r) See the remarks of Bowen, L. J., in *Boston Deep Sea Fishing and Ice Co. v. Ansell*, 39 Ch. D. 339.

liberty to rescind it, and sue for what he has already done under it upon a *quantum meruit* (s).

Where the servant elects to pursue this remedy *immediately* on his discharge, he can *only* recover wages for the period during which he has *actually served* (t).

Amount recoverable in this action.

And when a servant has refused to treat the contract of hiring and service as rescinded by his wrongful discharge, and has brought a special action against his master for such wrongful discharge, he cannot afterwards treat the contract as rescinded, and sue in this form of action for his wages during a broken quarter, they must be recovered in the special action, or not at all (u).

When this form of action cannot be brought.

OF THE DUTY OF THE MASTER TO PAY THE SERVANT HIS WAGES, AND THE SERVANT'S REMEDIES TO RECOVER THEM.

Default ; Bankruptcy ; Death ; of Master. Default ; Death ; of Servant.

Unless the circumstances under which services of any sort have been rendered by one person to another are such as to afford evidence of a contract, either express or implied, on the part of the person served to pay for them, there is no duty binding him to do so; and it is clear that the servant cannot maintain any action for wages for such services (v).

The master is not bound to pay wages unless he has contracted to do so.

Upon this principle Lord Mansfield always non-suited

Slaves non-suited.

(s) See 2 Smith's L. C., note to *Cutter v. Powell*, where the cases are collected; *Planche v. Colburn*, 8 Bing. 14; *Archard v. Horner*, 3 C. & P. 349; *Smith v. Hayward*, 7 A. & E. 544; *Fewings v. Tisdal*, 1 Exc. 295. See also *Robins v. Power*, 27 L. J., C. P. 257; *Prickett v. Badger*, 1 C. B., N. S. 296; *Berwick v. Horsfall*, 4 C. B., N. S. 450.

(t) *Smith v. Hayward*, 7 A. & E. 544; *Fewings v. Tisdal*, 1 Exc. 295.

(u) *Goodman v. Pocock*, 15 Q. B. 576.

(v) *Forod v. Morley*, Fost. & F. 496. The mere existence of a valid contract of hiring and service does not necessarily imply a contract to pay wages: as it often happens with boys and others that their board, lodging and clothes, together with the opportunity of learning their master's business, or the latter consideration alone, is a sufficient compensation for their services. *R. v. Shinfield*, 14 East, 541. A partner acting as managing secretary would not be thereby entitled to a salary: *Hutcheson v. Smith*, 5 Ir. Eq. 117.

*Alfred v.
Fitzjames.*

slaves who had been brought over to England and commenced actions for wages (*u*). And where a person, who had been a slave in the West Indies on an estate belonging to a lady, came over with her to England, and continued in her husband's service in England, Lord Kenyon held, that he could not maintain any action for wages against the husband, without some evidence of a promise by him to pay them, as there was no original contract of service for wages (*v*).

Brothers
living
together.

*Jarvis v.
Jarvis.*

And so where a man and wife lived with his brother, and assisted him in carrying on his business, it was held to be clear that he and his wife were not entitled to be paid for their services, unless the jury were satisfied that there was a contract express or implied on the part of the defendant to pay for such services (*y*).

Daughter
living with
father.

So it has been held in America, that where an unmarried daughter above twenty-one remained with her father, and nothing was said about wages, no contract to pay wages could be implied (*z*).

So master not
bound to pay
increased
wages, for
increased
labour, unless
he has con-
tracted to do
so.

And a sailor, sent by his captain to assist a vessel aground, could not sue the owner for his services (*a*).

*Ell v.
Drummond.*

Upon similar principles it is equally clear, that where a stipulated remuneration has been agreed upon, the servant has no claim to *additional* remuneration on the mere ground of his performance of additional services; unless he can prove some contract, either express or implied on the part of his master, to pay him an increased salary for his additional services, he can recover no remuneration for them (*b*). Thus, where a clerk to the commissioners of land-tax employed the plaintiff as his deputy at a salary of 100*l.* a year, and on new duties being imposed, which gave the clerk

u *R. v. Thames Ditton*, 4 Dougl. 300.

v *Alfred v. Fitzjames*, 3 Esp. 3.

y *Jarvis v. Jarvis*, 9 C. & P. 87.

z *Green v. Roberts*, 47 Barb. 521.

a *Lipson v. Harrison*, 22 L. T. Rep. 83.

b If duties of a different nature and a different class from those he contracted to perform are required from a servant he should be paid accordingly.

additional work, the plaintiff also performed that, it was held, that he was not legally entitled to any additional salary on that account: Lord Kenyon observing, that if he was, every porter in a shop, or clerk in an office, would, upon an increase of his master's business, be equally entitled to demand an increase of wages (*c*).

Bell v. Drummond.

And where A. is B.'s servant, a promise by C. to pay A. additional wages would be void, as being without consideration, all his services being sold to B. (*d*). Though it would be otherwise if C. originally induced A. to enter B.'s service by a promise of wages in addition to those paid by B. (*e*).

Clutterbuck v. Coffin.

And so where a sailor was under articles for a voyage out to M. and home, and on arrival at M. the captain, in consequence of the desertion of some of the crew, promised him double wages to induce him to remain, it was held that he could not sue the shipowners for such double wages, as he was not free from his original contract (*f*). But if anything had occurred to set him free from his articles, as if the prosecution of the voyage would be dangerous to life, in which case he would not be bound to proceed at the risk of his life (*g*), in such case a sailor might sue for a promised increase of wages (*h*).

Contracts with sailors to pay increased wages void;

unless free from original articles.

Where a vessel is *bonâ fide* abandoned at sea by order of the master for the purpose of saving life, and the contract entered into with the mariners is thereby put an end to, they may become entitled to be rewarded as salvors, though the crew in general, being bound to exert themselves to the utmost without extra remuneration, are not entitled to salvage (*i*).

When crew of abandoned vessel entitled to salvage.

(*c*) *Bell v. Drummond*, Peake, 45; *Harris v. Watson*, Peake, 72; *Stilk v. Myrick*, 2 Campb. 317; *Frazer v. Hatton*, 26 L. J., C. P. 226. The real ground upon which these cases are decided is, that there is *no consideration* for the promise to pay additional wages.

(*d*) *Carter v. Hall*, 2 Stark. 361.

(*e*) *Clutterbuck v. Coffin*, 3 M. & G. 842.

(*f*) *Harris v. Carter*, 3 E. & B. 559.

(*g*) *The Araminta*, 18 Jur. 793.

(*h*) *Hartley v. Ponsonby*, 26 L. J., Q. B. 322. And see *Hanson v. Royden*, L. R., 3 C. P. 47; *Hopkins v. M'Bride*, 18 Times L. Rep. 53.

(*i*) *The Florence*, 16 Jur. 572; *The Vrede*, 30 L. J., Pr. Mat. & Adm.

There is no implied contract to pay wages on simple dissolution of special contract.

Lamburn v. Cruden.

Whether or not there is an implied contract to pay wages is a question for a jury.

Evidence to rebut inference of implied contract.

It has been held, that upon a simple dissolution of a special contract of hiring and service, no new contract arises, by implication of law, in respect of services performed under such special contract, previously to its being so dissolved (*j*).

Where, therefore, the plaintiff was engaged as superintendent of packets in the service of a steamboat company at a yearly salary, payable quarterly, and a month after the termination of one of the years of the service, tendered his resignation, which after another month was accepted, but nothing was said about remuneration for the time elapsed since the termination of the last year's service, it was held, that the law would not imply an engagement to pay for the services performed during that time, but that it ought to have been left to the jury to say whether the parties had come to an agreement that those services should be paid for. In fact, it is a question for a jury in all cases where services have been rendered without any express contract to pay for them, whether or not there was an implied contract to do so (*k*).

In such cases the defendant may give such evidence as goes to show that the circumstances, from which the plaintiff would induce a jury to imply a contract to pay wages, do not warrant any such inference; as that the plaintiff cohabited with him, since that goes to show that the contract was not one of hiring and service, but of a

209. See this case, and also *Newman v. Walters*, 3 Bos. & P. 616, as to a passenger suing for salvage.

j *Lamburn v. Cruden*, 2 M. & G. 253. The mere fact that the defendant has received the benefit of what the plaintiff has done is not sufficient to entitle the plaintiff to recover on a new implied contract to pay. It is only when the circumstances are such as to give an option to the defendant to take or not to take the benefit of the work done, that there is any evidence on which to ground the inference of a new contract: *Sumpter v. Hedges*, (1898) 1 Q. B. 673.

k So directors of companies are not servants of the company. It is not implied from the mere fact that a man is a director, that he has a right to be paid for his services. His payment, unless made under some special provision, is in the nature of a gratuity; *per* Bowen, L. J., in *Hutton v. West Cork Railway Co.*, 23 Ch. D. 654.

different nature (*l*). Or the defendant may show that the plaintiff misconducted himself in such a manner as to rebut any inference of an implied contract to pay for his services (*m*).

It sometimes happens that, by the terms of the agreement entered into, it is left to the employer to determine whether or not *any* remuneration should be paid for services rendered, and, if any, what amount should be paid (*n*). In such cases, if it appear *clearly* to have been the intention of the parties that the employer should decide whether or not he would make *any* remuneration for the services rendered, no action can be maintained against him by the person employed, unless the employer has, after the performance of the work, expressly promised to pay something.

Where left to employer to decide whether any and what wages should be paid,

no action can be maintained unless he has promised to pay.

Thus, where a person performed work for a committee under a resolution that any service to be rendered by him should at a certain time be "taken into consideration, and such remuneration be made as should be deemed right," it was held, that no action would lie to recover remuneration for such work, as the person employed threw himself upon the mercy of the committee, who were to judge whether he should have anything, and if anything, then how much (*o*).

Taylor v. Brewer.

So where (*p*) the plaintiff wrote to the defendant and

Roberts v. Smith.

(*l*) *Bradshaw v. Hayward*, Car. & M. 591.

(*m*) *Cooper v. Whitehouse*, 6 C. & P. 545; *Speck v. Phillips*, 5 M. & W. 281. See *Moukman v. Shepherdson*, 11 A. & E. 411, where to an action for wages the defendant pleaded an agreement that the plaintiff should have none if he got drunk, &c.

(*n*) In *London Tramways Co. v. Bailey*, 3 Q. B. Div. 217, the defendant became conductor of a tramway company, and deposited 5*l.* as security for the discharge of his duties, &c., and it was provided that the "manager of the company should be sole judge between the company and the conductor whether the company was to be entitled to retain the whole, or any part, of the 5*l.* and wages for the current week as liquidated damages, and that the certificate should be binding and conclusive evidence in all Courts of justice"; and it was held that the manager's certificate was final and conclusive; and that a magistrate could not make any further inquiry. See as to this case *Armstrong v. South London Tramways Co.*, 64 L. T. Rep. 96.

(*o*) *Taylor v. Brewer*, 1 M. & S. 290; see *Moffatt v. Dickson*, 13 C. B. 575; *Moffatt v. Laurie*, 15 C. B. 583.

(*p*) *Roberts v. Smith*, 4 H. & N. 315.

agreed to accept the appointment of secretary to a joint-stock company at a yearly salary of 300*l.*, "if the company be completely registered and put into operation; if not, I shall be satisfied with any remuneration for my time and labour you may think me deserving of, and your means can afford." The defendant, in replying, said, "It is distinctly agreed and understood that if the company is not formed and carried out, that part of your letter which alludes to your salary be null and void, and that at the expiration of three months it is entirely left to me to give unto you such sum of money as I may deem right, as compensation for labour done, in the event of the company not being carried out." The company was never registered or carried out. And it was held that the plaintiff could not sue the defendant for compensation for services rendered towards registering the company.

Gratuity at
end of year.

Upon the same principles no action would lie for a gratuity promised at the end of the year (*q*), unless it were promised as part of the wages (*r*).

Ex parte
Metcalfe.

And upon similar principles the Court of Queen's Bench refused (*s*) to grant a mandamus to a local Board of Health to pay a reasonable remuneration to a person who presided at the first election of the board, upon a suggestion that they had allowed only an inadequate sum; the board having, under the Public Health Act, 1848 (*t*), a discretion as to what sum they think reasonable to allow, and the exercise of their discretion in this respect not being subject to review.

If remunera-
tion intended,

But if it appears from the agreement to have been the

q) *Parker v. Whitson*, 27 L. J., C. P. 236; see *Madison v. Alderson*, 8 App. Cas. 167, which arose out of a promise to make a will in favour of a servant; and in which *Leffers v. Mau*, 32 L. J., Ch. 49, was disapproved of.

r) *Lake v. Campbell*, 5 L. T., N. S. 582, where in an action for wrongful discharge plaintiff, who was wrongfully discharged before Lady-day, was held entitled to damages for loss of "a gift of 20*l.*" promised if he remained till Lady-day: as the sum of 20*l.* was not merely a gift but a remuneration for work to be done, and calling it a "gift" did not make it the less a remuneration. *Per* Erle, C. J., Williams and Willes, JJ.

s) *Ex parte Metcalfe*, 6 E. & B. 287.

t) 11 & 12 Vict. c. 63, s. 30; repealed and re-enacted; see the Public Health Act, 1875.

intention of the parties that the servant *should be remunerated* (u), but the *amount* of his remuneration was not settled, he will be entitled to recover upon the *quantum meruit* the fair value of his services. Thus, where (r) a law stationer said to his son on coming of age, "You shall have fifteen shillings a week till October; the books will then be made up and you shall have a *share*; we need not talk of the share till October comes; we shall settle it then," Lord Ellenborough held that the son was evidently entitled to a beneficial interest in the business, leaving the amount to be settled when the books should be balanced, and that the jury must consider what was a fair and just proportion for the father to give and the son to expect after what had passed between them.

but amount
not settled,
fair wages
may be
recovered.

Peacock v.
Peacock.

So where (x) A. agreed to enter into the service of B., and wrote to him a letter as follows:—"I hereby agree to enter your service as weekly manager, commencing next Monday: and the amount of payment I am to receive I leave entirely to you"; and A. served B. in that capacity for six weeks; it was held (Lord Wensleydale, dissentiente) that the contract implied that A. was to be paid something at all events for the services performed, and that the jury in an action on a *quantum meruit* might ascertain what B., acting *bona fide*, would or ought to have awarded.

Bryant v.
Flight.

And where (y) a verbal agreement had been made on behalf of a board of guardians with the surgeon, to attend

Bird v.
McGahey.

(u) As is generally the case where professional men are employed. In such cases, however, the onus lies upon the plaintiff to make out his case, if the employer raises a doubt whether the services were not to be gratuitous. *Hogston v. Kelly*, 18 L. J., Exc. 360; *Moffatt v. Laurie*, 15 C. B. 583. If services have been rendered, it ought to be clearly and satisfactorily made out that those services were not to be remunerated. *Per* Bramwell, B., in *Browning v. Great Central Mining Co.*, 29 L. J., Exc. 399. If the defendant put it out of the plaintiff's power to earn money agreed on, he would be liable to an action. *Inchbald v. Western Neilgherry Coffee, &c. Co.*, 34 L. J., C. P. 15.

(r) *Peacock v. Peacock*, 2 Campb. 45.

(x) *Bryant v. Flight*, 5 M. & W. 114; but see *Roberts v. Smith*, 28 L. J., Exc. 164, *ante*, p. 167.

(y) *Bird v. McGahey*, 2 Carr. & K. 707. In *Baxter v. Gray*, 3 M. & G. 771, a surgeon who had attended a patient in expectation of a legacy, was allowed to maintain an action for his services against the patient's executors, having been disappointed of his legacy. *Hulse v. Hulse*, 17 C. B. 711, was

*Bird v.
M'Gahey.*

a number of pauper children who had been attacked by Asiatic cholera, for which he was to receive *whatever remuneration the board of guardians should allow as right and proper*, and he attended them for several weeks, after which the board tendered him 50*l.* as a remuneration: it was held by Maule, J., that he might maintain an action for what was right and proper, and left it to the jury to ascertain what the board, acting *boni fide*, ought to have awarded.

*Rochings v.
Chandler.*

Where the plaintiff had by letter agreed that his salary was to be paid only in the event of the success of the undertaking, it was held that there was evidence to go to the jury that the plaintiff had a right to receive something for his services (z).

If wages depend on certificate of third person, the obtaining it is a condition precedent to right of action.

If either of the above questions depend upon the certificate of a third person, the obtaining such certificate is in general a condition precedent to the right of the servant to maintain any action, and if it is withheld by such third person even by fraud, no action for wages can be maintained by the servant. His remedy is an action against the third person for withholding the certificate (a), as until he has spoken (even though his certificate is withheld unreasonably and capriciously (b), no right can arise, which can be enforced either at law or in equity (c). In a

an action on a promissory note given by a moribund uncle to a nephew who had been his clerk for many years at a guinea and 30*s.* a week, and had also rendered other services, which continued up to the death of the uncle. The question was, whether there was any consideration for the note, and Jervis, C. J., said: "In order to make *future services* a good consideration for the giving of the note, we think it was incumbent on the plaintiff to show that there was some *contract* for future services which might have been enforced by the giver of the note if the recipient omitted to perform it."

z. *Rochings v. Chandler*, 9 Exc. 687.

a) *Morgan v. Rowe*, 9 Bing. 673; *Mebur v. Field*, 5 Exc. 829, which were cases of building contracts where the architect's certificate had not been obtained. See also *Grafton v. Eastern Counties Railway*, 8 Exc. 699; *Scott v. Avery*, 5 Ho. Lords Cas. 811; *Scott v. Corporation of Liverpool*, 28 L. J., Ch. 239; *Munro v. Butt*, 8 E. & B. 738; *Clarke v. Watson*, 34 L. J., C. P. 118.

b) *Stadhart v. Lee*, 32 L. J., Q. B. 75. See an action against the employer charging collusion with the architect in withholding certificate: *Batterbury v. Tyse*, 32 L. J., Exc. 177. And an action against the architect for withholding his certificate: *Ludbrook v. Burrett*, 46 L. J., C. P. 798.

c) The certificate need not be in writing, unless a written certificate is expressly required: *Roberts v. Watkins*, 32 L. J., C. P. 291. When given it

case (*d*) therefore, where the plaintiff agreed to serve the defendant as apothecary's assistant for one year gratuitously, and after that to receive such salary as C. should think reasonable, and it appeared that no application had been made to C. to fix any salary, it was held that the plaintiff could not recover any salary.

Owen v. Bowen.

Printed at length in the Appendix will be found certain Acts of Parliament, the Truck Acts of 1837, 1887 and 1896, and the Hosiery Manufacture Wages Act, 1874, by which payments of wages in certain trades is forbidden to be made otherwise than in current coin of the realm, and restrictions are put on stoppages and deductions being made by employers in respect of fines and suchlike matters.

Payment of wages must be in current coin, and without stoppages.

With regard to certain other trades Acts of Parliament have been passed to forbid the payment of wages in public-houses, beershops and other places; such as the Metalliferous Mines Regulation Act, 1872, the Coal Mines Regulation Act, 1887, and the Payment of Wages in Public-houses Prohibition Act, 1883, which will be found printed in the Appendix.

And not in public-houses.

The action for wages should of course be brought against the person by or for whom the plaintiff was hired. But it by no means necessarily follows that the person appointing to an office or situation is liable to pay the salary, *e.g.*, in the case of a collector of poor rates, the guardians who appointed were held not liable to be sued for the collector's salary, which was charged on the poor rate by 4 & 5 Will. 4, c. 76, s. 46 (*e*).

Against whom action should be brought.

Collector of poor rates.

Where a dissenting minister was appointed to a

Minister appointed by trustees.

is final: *Goodyear v. Mayor of Weymouth*, 35 L. J., C. P. 12. See *ante*, p. 167, note (*n*). The damages in an action for withholding the certificate would be the value of the work done: 31 L. J., Q. B. 136.

(*d*) *Owen v. Bowen*, 4 C. & P. 93.

(*e*) *Smart v. Guardians of West Ham Union*, 10 Exc. 867. As to the proper mode of recovering salary by officials appointed by commissioners, &c., under an Act of Parliament, see *Bogg v. Pearce*, 10 C. B. 534; *Kendall v. King*, 17 C. B. 483; *Bush v. Martin*, 33 L. J., Exc. 17; *Richardson v. Corcoran*, 7 Ir. C. L. Rep. 121; *Hall v. Taylor*, E. B. & E. 107; *Edwards v. Lowndes*, 1 E. & B. 81. As to the remedy by mandamus, see *Bush v. Beavan*, 32 L. J., Exc. 54; *Bush v. Martin*, *ubi supra*. Where a salary is payable only out of the borough fund, see *Addison v. Mayor of Preston*, 12 C. B. 108.

Cooper v.
Whitehouse.

Servant to
partners.
Beckham v.
Knight.

Projector and
secretary of
company.
Wilson v.
Viscount
Crezon.

chapel by *part* of the trustees, but received a notice discharging him and demanding possession of the chapel signed by *all* the trustees, upon which he sued them *all* for his salary, he was non-suited (*f*). But in the case of a servant engaged by one of several partners, *all* the partners would be liable if the contract was made in respect of the partnership (*g*), although the contract was in writing (not being by deed), and signed by one only.

And where (*h*) the plaintiff *himself* was a promoter of a projected joint-stock company, it was held that he could not sue a member of the provisional and managing committee for salary alleged to be due to him for services as the secretary to the projected company. And Lord Wensleydale said:—"If it were a transaction among ordinary persons the evidence might be sufficient to make out a *prima facie* case against the persons who signed or sanctioned the employment of the party, that he was to be a paid secretary. But when we have the additional fact that he is himself one of the original promoters and projectors of the company, more evidence is necessary than in the case of a mere stranger; and the question is, whether he is not so implicated in the scheme that all the acts of the provisional committee are to be considered as his acts, and consequently that he is one of his own employers. The provisional committee are a delegated body, acting for others; and, *prima facie*, any contract they make is made on behalf of those who appointed them, and orders given by them are *prima facie* the orders of all the projectors, including the plaintiff. The plaintiff, therefore, was bound to give further evidence to show that the defendant meant to contract as a principal, independently of his acts as a provisional committee-man of the company. On the facts in evidence in this case no such intention appears."

(*f*) *Cooper v. Whitehouse*, 6 C. & P. 545.

(*g*) *Beckham v. Knight*, 1 M. & G. 738; *Drake v. Beckham*, 11 M. & W. 315; 2 Ho. Lords Cas. 579, 623.

(*h*) *Wilson v. Viscount Crezon*, 15 M. & W. 532; see *Holmes v. Higgins*, 1 B. & C. 74; *Melbourn v. Codd*, 7 B. & C. 119.

However, where an express agreement with the plaintiff was entered into by a committee for obtaining a Turnpike Road Act to do certain work, and the plaintiff afterwards became a subscriber, it was held that he was not thereby precluded from recovering for work done under such express contract before he became a subscriber (*i*).

Lucas v. Beach.

Where three partners engaged the plaintiff by an agreement in writing to serve them as foreman for a certain period, but before that period had elapsed, one of the three retired, and the plaintiff continued to serve the other two for some years, and they afterwards became bankrupt, whereupon the plaintiff was dismissed by their assignees: it was nevertheless held that he might still sue all the three partners upon the original agreement, which was not rescinded (*j*).

Dobbin v. Foster.

If the amount sought to be recovered for wages is small, it will be better to sue in the County Court than in the High Court, since, under sect. 116 of the County Courts Act, 1888 (51 & 52 Vict. c. 43), and Order LXV., r. 12 of the Rules of the Supreme Court, if in an action in the High Court founded on contract a plaintiff recovers less than 20*l.* he will *primâ facie* be entitled to no costs at all, and if he recovers a sum not exceeding 50*l.* he will *primâ facie* be entitled to County Court costs only. And, in certain cases wages of small amount due to workmen and labourers may be recovered by summary proceedings before a magistrate (*k*). But where a discharged servant has brought an action in the County Court for wrongful discharge and failed, he cannot afterwards take proceedings for recovery of wages before a magistrate (*l*).

When to sue
in County
Court:

or proceed
before justice.

(*i*) *Lucas v. Beach*, 1 M. & G. 417.

(*j*) *Dobbin v. Foster*, 1 C. & K. 323; see *Hobson v. Cowley*, 27 L. J., Exc. 205, *ante*, p. 13.

(*k*) The Employers and Workmen Act, 1875, in the Appendix, *post*, and see 6 & 7 Vict. c. 86, s. 22, as to wages of drivers and conductors of hackney carriages and metropolitan stage carriages, and disputes between them and their employers.

(*l*) *Routledge v. Hislop*, 29 L. J., M. C. 90; and *vice versâ*, *Millett v. Coleman*, 44 L. J., Q. B. 194.

Payment,
presumption
of.

It sometimes happens that wages which have actually been paid are again demanded in consequence of no receipt having been taken. In such cases, the Courts will sometimes presume, from the lapse of time or other circumstances, that they have been paid, and the servant will not be allowed to recover in an action for them.

from course of
business.

Thus, in a case tried many years ago at Guildhall, which was an action by a workman at a sugar refiner's, a witness proved that the plaintiff had worked there for more than two years. But Abbott, C. J., said that he should direct the jury to presume that men employed in that way were regularly paid every Saturday night, unless some evidence was given on the part of the plaintiff to satisfy the jury that the plaintiff had, in point of fact, never been paid; and as no such evidence was produced, the plaintiff was non-suited (*m*).

lapse of time.

And in an action for wages, as a menial servant, Gaselee, J., ruled that in the regular course, if a servant has left a considerable time, the presumption is, that all the wages have been paid (*n*); and in another case (*o*), Lord Wensleydale said: "Where a person serves in the capacity of a domestic servant and no demand for payment of wages is made by the servant for a considerable period after such service has terminated, the inference is either that the wages have been paid or that the service was performed on the footing that no payment was to be made."

BANKRUPTCY OF MASTER.

The bankruptcy of a master does not of itself operate to dissolve a contract of hiring (*p*), but the fact of a

(*m*) Note to *Sellen v. Norman*, 4 C. & P. 81; see also *Lucas v. Norosiliewski*, 1 Esp. 296. As to payment of wages by a stranger not himself liable as co-contractor, or otherwise, see *Simpson v. Eggington*, 10 Exc. 845, 847.

(*n*) *Sellen v. Norman*, 4 C. & P. 80. In a note to this case the reporter says with truth, "It would often save persons great inconvenience and expense, if, when they paid a servant's wages, they took a regular receipt."

(*o*) *Gough v. Fendon*, 7 Exc. 50.

(*p*) The Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), provides by sect. 41, that where at the time of the presentation of the bankruptcy petition, any

servant's ceasing to serve his master, when his master is adjudicated bankrupt, may show that the contract of service has been dissolved by mutual consent (*q*).

In the case of a limited company the appointment of a receiver and manager in a debenture holder's action (*r*) or a winding-up order (*s*), is a notice of discharge to the servants employed by the company. So also is a resolution for a voluntary winding up (*t*).

Winding up
of company.

In the distribution of the property of a bankrupt and in the distribution of the assets of any company being wound up under the Companies Act, 1862, and the Acts amending the same, it is provided (*u*) by sect. 1 of the Preferential Payments in Bankruptcy Act, 1888 (51 & 52 Vict. c. 62), that certain payments shall be made in priority to all other debts. These payments include, together with certain parochial or other local rates, the following: "all wages or salary of any clerk or servant in respect of services rendered to the bankrupt or the company during four months before the date of the receiving order, or, as the case may be, the commencement of the winding up, not exceeding fifty pounds; and all wages of any labourer, not exceeding twenty-five

Preferential
payment of
wages.

person is apprenticed or is an articled clerk to the bankrupt, the adjudication of bankruptcy shall, if either the bankrupt or the apprentice or the clerk gives notice in writing to the trustee to that effect, be a complete discharge of the indenture of apprenticeship or articles of agreement: and provision is also made for the repayment of a reasonable part of the premium and for the transference of the indenture of apprenticeship or articles of agreement to some other person, if it should be expedient.

(*q*) *Thomas v. Williams*, 1 A. & E. 685; see also *Thomas v. Hopkins*, 29 L. J., C. P. 187.

(*r*) *Reid v. Explosives Co.*, 19 Q. B. D. 264. But circumstances may exist, as where the business is continued after the winding-up order, showing that this notice of discharge has been waived, or that a new agreement of service has been made: *Re English Joint Stock Bank*, 3 Eq. 341; *Re Forster*, 19 L. R., Ir. 240.

(*s*) *Chapman's case*, 1 Eq. 346; *Re Oriental Bank, MacDowall's Case*, 32 Ch. D. 366.

(*t*) *Shirreff's case*, 14 Eq. 417.

(*u*) By the Preferential Payments in Bankruptcy Amendment Act, 1897 (60 & 61 Vict. c. 19), the debts mentioned in sect. 1 of the Act of 1888 shall, in the winding up of a company, so far as the assets of the company available for the payment of general creditors may be insufficient to meet them, have priority over the claims of holders of debentures or debenture stock under any floating charge created by such company.

pounds, whether payable for time or for piece-work, in respect of services rendered to the bankrupt or the company during two months before the date of the receiving order, or, as the case may be, the commencement of the winding up. Provided that where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the Court may decide to be due under the contract, proportionate to the time of service up to the date of the receiving order, or, as the case may be, the commencement of the winding up." The Act also provides that the foregoing debts shall rank equally between themselves and shall be paid in full, unless the property of the bankrupt is, or the assets of the company are, insufficient to meet them, in which case they shall abate in equal proportions between themselves; and subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the foregoing debts shall be discharged forthwith so far as the property of the debtor, or the assets of the company, as the case may be, is, or are sufficient to meet them. The Act repeals sect. 40 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), and provides that the above-mentioned provisions shall have effect, so far as they relate to the property of a bankrupt, as part of sect. 40 of the Bankruptcy Act, 1883.

Under former Bankruptcy Acts it has been held that to come within provisions somewhat similar to those above set out, which are now in force, the engagement of a servant must have been of a more permanent nature than a weekly hiring (*r*), but as the wages of a labourer or workman, "whether payable for time or for piecework," are now entitled to priority, those decisions probably would not now be applicable. And under sect. 32 of

(*r*) *Ex parte Collyer*, 2 Mont. & A. 29; *Ex parte Crawfoot*, Mont. 270; *Ex parte Grellier*, Mont. 264.

the Bankruptcy Act, 1869, it was necessary that the servant should have been "in the employment of the bankrupt at the date of the order of adjudication," so that it was held (*w*) that a music master and a drill sergeant engaged by the term to attend a school twice a week at a fixed payment per hour or per lesson were not entitled to preferential payment. But there are no corresponding words in the Act now in force.

The following persons have been held to be entitled to preferential payments under previous Bankruptcy Acts: the mate of a vessel (*x*); a French teacher in a school (*y*), and a traveller, engaged at an annual salary (*z*); but a traveller paid by commission is not entitled to preferential payment (*a*). A managing director (*b*) has been held not to be a servant of a limited company within the meaning of this enactment.

Where employers made deductions from their workmen's wages which were not valid deductions under the Truck Act, 1831, and the employers afterwards became bankrupt, it was held (*c*) that, there having been no valid payment of their wages, the workmen were entitled to be paid in full out of the bankrupts' estate the amount of the deductions, as unpaid wages.

The provision as to clerks is not limited to trade clerks, nor is it necessary that the trading should have continued during the whole of the period for which wages are claimed (*d*).

A trader borrowed 550*l.* under an agreement, by which the lender was to become his clerk at a salary of 22*l.* 10*s.* per annum, the trader to produce his accounts and balance sheet to the lender, who was to collect debts and

Who are clerks.

Ex parte Harris.

(*w*) *Ex parte Walter. Re Heath*, 15 Eq. 412.

(*x*) *Ex parte Homborg*, 2 Mont. D. & D. 642.

(*y*) *Ex parte Collinet*, 1 Bank. & Ins. Rep. 82.

(*z*) *Ex parte Neal*, Mont. & M. 194.

(*a*) *Ex parte Simmons*, 30 L. T., O. S. 311.

(*b*) *Hopkinson v. Newspaper Proprietary Syndicate, Limited*, (1900) 2 Ch. 349.

(*c*) *Ex parte Cooper. Re Morris*, 26 Ch. D. 693.

(*d*) *Ex parte Gough*, Mont. & B. 417.

alone draw cheques. If the balance was in the trader's favour at any time, he might draw to the amount of it. On payment of the loan, or on proceedings being taken to recover it, the agreement was to be at an end; the lender to have the option of becoming a partner. The trader became bankrupt, and it was held that the lender was a clerk, and entitled to three months' salary in full, under 12 & 13 Vict. c. 106, s. 168; and, also, that his having been absent from business, owing to ill health, for the three months immediately preceding the bankruptcy, with the bankrupt's leave, did not take away this right (*e*).

*Ex parte
Hickin.*

A. entered the service of B., as bookkeeper and cashier, in 1844, and remained till December, 1848, without any agreement being made as to the amount of his salary, but he drew small sums from time to time. A. stated that in December, 1848, it was agreed between him and B. that his salary should be at the rate of 250*l.* per annum from 1844, and that the reason why no arrangement was made before was, that B. was making experiments in a manufacture, from which he hoped to derive a large fortune, out of which A. expected to be paid. B. became bankrupt in February, 1849, and A. was allowed to prove for his salary (*f*).

*Colliers'
drawers.*

Where coal proprietors employed colliers to whom work was let off at so much per score baskets, and each collier had a drawer attached to him, it was held that as the drawers could not have maintained an action against the proprietors for their wages they were not entitled to wages under 12 & 13 Vict. c. 106, s. 169 (*g*).

*Where a
company
wound up.*

In the event of a company being wound up under the Companies Act, 1862, all debts payable on a contingency and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, are by sect. 158 of that Act admissible to proof against the company.

(*e*) *Ex parte Harris*, 1 De G. 165.

(*f*) *Ex parte Hickin*, 19 L. J., Bank. 8.

(*g*) *Ex parte Ball*, 3 De G., M. & G. 155.

So where a company engaged M. to act as their agent for five years at a fixed salary, *and also* for a commission of ten per cent. on the net profits in each year, and the company was wound up before the end of the five years, it was held that M. was not entitled to any compensation for loss of commission during the unexpired part of the five years (*h*). But in another case (*i*), where a company engaged D. and G. to act as their commercial travellers for three years in a certain district, but was wound up before the end of the three years, Bacon, V.-C., held that D. and G. were entitled to compensation in respect of commission for the unexpired part of the three years, distinguishing the case from *Maclure's case*.

DEATH OF MASTER.

By the death of the master (*j*) the contract is at an end, and the servant is discharged (*k*) unless the contrary is stipulated by the terms of the contract (*l*); and the sureties to a bond for the faithful service of the servant are released (*m*). And it seems that where there is no custom upon the subject which can be imported into the contract, and the service is under an *entire contract* for a year's service and a year's pay, if the master dies in the

Discharges
servant.

Where con-
tract for an
entire year's
service, servant
not strictly
entitled to any
wages.

(*h*) *Re English and Scottish Marine Insurance Co., Maclure's Claim*, 5 Ch. 737.

(*i*) *Re Patent Floor Cloth Co., Dean and Gilbert's Claim*, 41 L. J., Ch. 476.

(*j*) As to the effect of the death of a partner, see *Phillips v. Alhambra Palace Co.*, (1901) 1 Q. B. 59, cited *ante*, Chap. I.

(*k*) *Wentw. Off. Ex.* 141, 14th edit.; *Wms. Exors.* 722. But it was held that a pauper gained a settlement by serving out the year with the executors of the master, who died in the middle of the year; on the ground that the service to the executors was a continuance of the *same service and not a new contract*: *R. v. Ladoek*, Burr., S. C. 179; *Jackson v. Bridge*, 12 Mod. 650. A contract of apprenticeship, in so far as it was a personal contract, is put an end to by the death of the master. *R. v. Peck*, 1 Salk. 66; *Baxter v. Burfield*, 2 Str. 1266; Bac. Abr. "Master and Servant," G. As to the liability of the apprentice to serve the executors, see *Cooper v. Simmons*, 5 L. T., N. S. 712. It may be convenient to mention here that if A. hires B. to serve C. and C. dies, B. is only entitled to wages up to the time of C.'s death: *Taylor v. Caldwell*, 32 L. J., Q. B. 164; *post*, p. 186.

(*l*) *Farrow v. Wilson*, L. R., 4 C. P. 744.

(*m*) *Barker v. Parker*, 1 T. R. 287.

middle of the year the servant is not legally entitled to any wages for a broken period of service.

*Countess of
Plymouth v.
Throgmorton.*

Thus, where (u) debt was brought upon a writing, by which the defendant's testator had appointed the plaintiff's testator to receive his rents, and promised to pay him 100*l.* per annum for his service, the plaintiff showed that the defendant's testator died three-quarters of a year after, during which time he served him, and he demanded 75*l.* for three quarters; after judgment for the plaintiff in the Common Pleas, the defendant brought a writ of error, and it was argued that without a full year's service nothing could be due, for that it was in nature of a condition precedent, that it being one consideration and one debt, it could not be divided; and the Court of King's Bench were of that opinion, and reversed the judgment.

Where there
is a custom
to that effect,
servant entitled
to wages for
actual service.

Where, however, there is a custom applicable to persons in the situation in which the servant was, as there is with regard to domestic servants, who are generally considered entitled to wages for the time they serve, though they do not continue in the service during the whole year, the servant would probably be held entitled to recover wages for the period of actual service (o). And it is conceived that in all cases where the contract is not an entire contract for a whole year's service on one side, and a whole year's pay on the other, a servant, whose master dies in the middle of a year, might recover his wages for the broken period of service, upon principles similar to those which allow a

So where
contract not
for an entire
year.

(u) *Countess of Plymouth v. Throgmorton*, 1 Salk. 65; see *Elderton v. Emmens*, 6 C. B. 160. In *Whineup v. Hughes* (L. R., 6 C. P. 78), where by an apprenticeship deed A was to serve B, and B. to teach A. for a term of years, but there was no provision as to service to B.'s executors or return of premium, and B. died during the term, it was held that no action for damages or for money had and received lay against B.'s executors for a return of any portion of the premium; dissenting from *Horst v. Tolson*, 2 Mac. & G. 131, in which Lord Cottenham had held differently in the case of an articulated clerk to an attorney. *Whineup v. Hughes* has been followed in *Ferna v. Carr*, 28 Ch. D. 409. See also *Leamyd v. Brook*, (1891) 1 Q. B. 431.

(o) See *Cutter v. Powell*, *post*, p. 188.

servant, wrongfully discharged, to treat the contract as rescinded, and sue for his wages for the period of actual service (*p*).

The Apportionment Act, 4 & 5 Will. 4, c. 22, would not in general apply to cases of hiring and service (*q*).

The executors or administrators of their master are the persons to whom servants must look for payment of their wages, after his decease.

It is stated by some authorities (*r*), that the wages of domestic servants and of labourers are entitled to preference over other debts of the deceased. But it is difficult to point out any legal ground on which such preference can be claimed in England (*s*), though they are entitled to priority in France (*t*).

The subject of legacies to servants, and how far such legacies operate to extinguish the servant's claim to wages, will be treated of hereafter in a separate Chapter (*u*).

Where a farm servant left his wages from time to time in his master's hands, and it was agreed between them that the debt thus due should carry interest, and the master died, having by his will given all his real and personal property to his wife, out of which he desired that she would discharge all his legal debts; it was held, in a suit for the administration of his estate in Chancery, that the Statute of Limitations did not operate as a bar to arrears of interest upon the sum left by the servant in his master's hands (*r*).

Apportionment Act.

Master's executors pay wages.

Query, whether wages entitled to preference over other debts.

Legacies to servants.

Wages left in master's hands: interest.

(*p*) *Ante*, p. 157.

(*q*) *Lowndes v. Earl of Stamford*, 18 Q. B. 425.

(*r*) 2 Bl. Comm. 511, citing 1 Roll. Abr. 927.

(*s*) 2 Wms. Exors. 875, 9th ed. It may be here mentioned as a caution to servants, that upon the death of their master the only persons entitled to deal with his personal property are his *legal* personal representatives, that is, his executors if he has left any; or, if not, his administrators; and that in a case where a housekeeper, on her master's death, without leaving any executors, applied certain cash in the house, and the produce of the sale of some of her master's property, to the payment of the expenses of his funeral and other expenses, without any authority to do so, she was afterwards held liable to an action at the suit of the widow and administratrix for the money so received and applied. *Welchman v. Sturgis*, 13 Q. B. 552.

(*t*) Code Civ. liv. iii. tit. xviii. ch. ii. s. 1. 2101.

(*u*) See the last Chapter in the Book.

(*v*) *Blower v. Blower*, 28 L. J., Ch. 181.

DEFAULT OF SERVANT.

Servant making default, or rightfully discharged, entitled to no wages.

When a servant, whose wages are due *periodically*, refuses to perform his part of the contract, and serve his master in the manner contracted for, or so conducts himself that the master is justified in discharging him without notice, he is not entitled to be paid *any* wages for that portion of time during which he has served since the last periodical payment of wages (*w*). That is to say, if a servant whose wages are only due yearly abscond from his master, or is *rightfully* discharged before the expiration of the year, he could recover nothing for services rendered previous to such departure or discharge. And the same principle would apply to the case of a quarterly, monthly or weekly hiring. In any of such cases, if the servant fail to perform his part of the contract, or be rightfully discharged (*x*) at any intervening period between the days when his wages are due, he can recover nothing for the broken period of service. This is upon the principle that the contract was an entire contract, and the performance of the service for the *whole* time agreed upon was in the nature of a condition *precedent* to the right to recover *any* wages. It is a general rule, applicable to all contracts, that (*y*) where the plaintiff has contracted to do an entire work

(*w*) See Dalt. Just. ch. 58, p. 129, where it is said, "If a servant of his own accord shall depart from his master before his time expired, he shall lose all his wages"; *Walsh v. Walley*, L. R., 9 Q. B. 367; *Saunders v. Whittle*, 33 L. T., N. S. 816; *Greyson v. Watson*, 31 L. T., N. S. 143. Where by the rules of a cotton mill any person absenting himself was to give notice to the overlooker, and in default all wages then earned were to be forfeited, and a weaver having obtained leave for half a day, promising to return next morning, did not return till the afternoon, she was held not to forfeit her wages. *Taylor v. Carr*, 30 L. J., M. C. 201.

(*x*) See Bowen, L. J., in *Boston Deep Sea Fishing & Ice Co. v. Ansell*, 39 Ch. D. 339, cited in the preceding Chapter, as to what cause will justify the discharge of a servant.

(*y*) *Appleby v. Myers*, L. R., 2 C. P. 651, followed in *Forman & Co. Proprietary, Limited v. Liddesdale*, (1900) A. C. 190. So in *The Madras*, (1898) P. 99, where the plaintiffs agreed to tow the defendant's ship from K. to S. for a fixed sum, but the fulfilment of their agreement became impossible owing to circumstances for which neither party was to blame, it was held that the plaintiffs were not entitled to recover on a *quantum meruit* for any portion of the towage. And see note to *Cutter v. Powell*, 2 Sm., L. C. 1.

for a specific sum he can recover nothing unless the work be done, or it can be shown that it was the defendant's fault that the work was incomplete (*z*), or that there is something to justify the conclusion that the parties have entered into a fresh contract (*a*).

Thus, in an action (*b*) for wages for work performed by the plaintiff, who was a seaman on board the defendant's ship during a voyage from Altona to London, where it appeared that the service was under an agreement, by which the plaintiff agreed to serve from Altona to London *and back again*, and there was an express stipulation, by which the plaintiff was bound to demand no wages till the conclusion of the voyage, the plaintiff was nonsuited on the ground that the contract remained unperformed and unrescinded, and the plaintiff should have sued the defendant upon the contract, and the nonsuit was held right by the Court of King's Bench.

*Hulle v.
Heightman.*

Upon similar principles, in a variety of cases, servants who have been *rightfully* discharged, and have afterwards sued their late masters for wages, have failed to recover anything.

Thus, in an action (*c*) brought by a *yearly servant* to a farmer, to recover wages for his service from Michaelmas to July, when he was discharged under circumstances which were held to justify his discharge, it was held that he could not recover anything. And Lord Ellenborough said, "If the contract be for a year's service, the year must be completed before the servant is entitled to be

*Spain v.
Arnott.*

(*z*) *O'Neil v. Armstrong & Co.*, (1895) 2 Q. B. 418. There the plaintiff contracted with the defendants, as agents for the Japanese Government, to serve as one of the crew on board a Japanese war-ship from the Tyne to Yokohama for a fixed sum. On the voyage war was declared by Japan against China, and the plaintiff thereupon refused to continue to serve. In an action by him for wages it was held that as the declaration of war by the defendants' principals would expose the plaintiff to greater risks than he had contracted to run, he was justified in leaving the ship and claiming his stipulated wages.

(*a*) As to the evidence necessary to support a claim founded on a new implied contract, see *Sumpter v. Hedges*, (1898) 1 Q. B. 673, cited *ante*.

(*b*) *Hulle v. Heightman*, 2 East, 145; and see 2 Smith's L. C. 16. See also *Beale v. Thompson*, 4 East, 546; *Appleby v. Dods*, 8 East, 300; *Jesse v. Roy*, 1 C., M. & R. 316.

(*c*) *Spain v. Arnott*, 2 Stark. 256; *Robinson v. Hindman*, 3 Esp. 235.

*Turner v.
Robinson.*

*Ridgway v.
Hungerford
Market Co.*

*Lilley v.
Elwin.*

Except in
respect of
periodical
payments
accrued due.

*Taylor v.
Laird.*

paid." Lord Tenterden afterwards, on two occasions (*d*), expressed a similar opinion. And, upon the authority of these cases, Lord Denman nonsuited a servant who, having been properly discharged (as was admitted), afterwards brought an action for wages during a broken period of service, and the nonsuit was held right by the Court of King's Bench (*e*). The principle on which these cases were decided, was afterwards (*f*) applied to the case of a clerk of a public company, whose salary had been paid *quarterly*, and who, having been discharged for improper conduct some little time after the quarter-day, was held not to be entitled to recover anything for the period which had elapsed since the last periodical payment of his salary. In his judgment, in that case, Lord Denman said, "*Turner v. Robinson*, and many other cases, have shown that if a party hired for a certain time, so conduct himself that he cannot give the consideration for his salary, he shall forfeit the current salary even for the time during which he has served."

And in a subsequent case (*g*), in which an action was brought by a waggoner and servant in husbandry (who left his work and was afterwards summoned before a magistrate under the statute (now repealed) 4 Geo. 4, c. 34, s. 3, and by him discharged from the service) against his master, it was held that he could not recover wages for the time of his actual service, as he was bound to give a whole year's service before earning any wages, and broke his contract by leaving the service before the year's end.

But default of the servant after the day on which a periodical payment of wages accrued due would not deprive him of his right to recover such periodical payment—would not divest a vested right. In a case (*h*), therefore, in which it was part of the engagement of the plaintiff that he should remain in charge of a vessel which was to

d *Hottelmann v. Boulnois*, 2 C. & P. 510; *Atkin v. Acton*, 4 C. & P. 208.

e *Turner v. Robinson*, 5 B. & Ad. 789.

f *Ridgway v. Hungerford Market Co.*, 3 A. & E. 171.

g *Lilley v. Elwin*, 11 Q. B. 742.

h *Taylor v. Laird*, 1 H. & N. 267.

sail on a trading and exploring expedition to the Niger during the whole voyage; but the pay was to be "a fixed pay of 50*l.* per month," and the plaintiff in the middle of the voyage refused to proceed; the Court held that he was entitled to recover the monthly wages which accrued before his refusal; Pollock, C. B., saying, "There 'per month' means 'each month,' or 'monthly,' and gives a cause of action as each month accrues, which once vested is not subsequently lost or divested by the plaintiff's desertion or abandonment of his contract. The words are plain, and no mercantile man could doubt what was meant. But further, if this meaning is not given, the result would be that had the plaintiff died or the voyage failed, at the last moment nothing would be payable by the defendant, because, according to his contention, the performance of the entire work contracted for was a condition precedent to the right to receive anything."

And a similar decision was given in another similar case (i), where the ship's articles provided for "amount of wages per calendar month"; and the plaintiff recovered, although he was left behind, through his own negligence, at one of the places at which the ship stopped before the completion of the voyage.

*Button v.
Thompson.*

By the Army Act, 1881 (j), it is enacted, "(1) A soldier of Her Majesty's regular forces shall not be liable to be taken out of Her Majesty's service by any process, execution, or order of any Court of law or otherwise; or to be compelled to appear in person before any Court of law, except in respect of the following matters, or one of them (that is to say)—

Servants
enlisting as
soldiers.

"(a) On account of a charge of or conviction for crime; or

"(b) On account of any debt, damages, or sum of money when the amount exceeds 30*l.* over and above all costs of suit.

(i) *Button v. Thompson*, L. R., 4 C. P. 320. See also *Stubbs v. Holywell Railway Co.*, *post*, p. 189.

(j) 44 & 45 Vict. c. 58, s. 144, and see sect. 96 as to apprentices and indentured labourers in a colony.

“(2) For the purposes of this section a crime shall mean a felony, misdemeanor or other crime or offence punishable, according to the law in force in that part of Her Majesty’s dominions in which such soldier is, with fine or imprisonment or some greater punishment, and shall not include the offence of a person absenting himself from his service or neglecting to fulfil his contract, or otherwise misconducting himself respecting his contract.”

But there seems to be no provision in the Army Act, as there was formerly in the Mutiny Act (*k*), authorizing the justice before whom a recruit is attested to adjudge him a reasonable proportion of his wages for the time he has actually served.

DEATH OF SERVANT.

Executors not
liable on con-
tracts for
personal
services.

Taylor v.
Caldwell.

The executors of a servant are not liable upon a contract for personal services, there being an implied condition in such contracts, that if the servant shall die this contract shall be considered as discharged. Blackburn, J., in a case (*l*) that has frequently been cited with approval used the following words :

“There is a class of contracts in which a person binds himself to do something which requires to be performed by him in person; and such promises, *e.g.*, promises to marry or *promises to serve for a certain time*, are never in practice qualified by an express exception of the death of the party; and therefore, in such cases, the contract is in terms broken if the promisor dies before fulfilment. Yet it was very early determined, that if the performance is personal the executors are not liable: *Hyde v. Dean of Windsor* (*m*). See 2 Williams on Executors, 1560, where a very apt illustration is given. ‘Thus,’ says the learned author, ‘if an author undertakes to compose a work, and dies before completing it, his executors are discharged from this contract; for the undertaking is merely personal in its nature, and by the intervention of the contractor’s death has become impossible to be performed.’ For this, he cites a dictum of Lord Lyndhurst in *Marshall v. Broadhurst* (*n*), and a case mentioned by Patteson, J., in *Wentworth v. Cook* (*o*). In *Hall v.*

(*k*) See 22 Viet. c. 4, s. 63.

(*l*) *Taylor v. Caldwell*, 3 B. & S. 826.

(*m*) Cro. Eliz. 552.

(*n*) 1 Tyrw. 349.

(*o*) 10 A. & E. 45; 8 L. J., Q. B. 230.

Wright (p), Crompton, J., in his judgment, puts another case. 'Where a contract depends upon personal skill, and the act of God renders it impossible; as, for instance, in the case of a painter employed to paint a picture, who is struck blind, it may be that the performance might be excused.' It seems that in those cases the only ground on which the parties or their executors can be excused from the consequences of the breach of contract is, that from the nature of the contract there is an implied condition of the continued existence of the life of the contractor; and perhaps, in the case of the painter, of his eyesight. In the instances just given the person, the continued existence of whose life is necessary to the fulfilment of the contract, is himself the contractor; but that does not seem in itself to be necessary to the application of the principle, as is illustrated by the following example: In the ordinary form of an apprenticeship deed, the apprentice binds himself in unqualified terms to serve until the full end and term of seven years be fully complete and ended, during which term it is covenanted that the apprentice his master 'faithfully shall serve'; and the father of the apprentice, in equally unqualified terms, binds himself for the performance by the apprentice of all and every covenant on his part (see the form 2 Chitty on Pleading, 342.) It is undeniable that if the apprentice dies within the seven years, the covenant of the father that he shall perform his covenant to serve for seven years is not fulfilled, yet surely it cannot be that an action would lie against the father. Yet the only reason why it would not is that he is excused because of the apprentice's death (*q*). These are instances where the implied condition is of the life of a human being, but there are others in which the same implication is made as to the continued existence of a thing."

Taylor v. Caldwell.

His lordship gave several examples; and added,

"The principle seems to us to be, that, in contracts in which the performance depends on the continued existence of a given person or thing, a condition is implied that the impossibility arising from the perishing of the person or thing shall excuse the performance. In none of these cases is the promise in words other than positive, nor is there any express stipulation that the destruction of the person or thing shall excuse the performance; but that excuse is by law implied, because, from the nature of the contract, it is apparent that the parties contracted on the basis of the continued existence of the particular person or chattel."

Where the death of a servant prevents his performing his part of the contract, and completing the period of service agreed upon, and by the terms of his contract his Wages.

(*p*) E., B. & E. 746; 27 L. J., Q. B. 345.

(*q*) See *Boast v. Firth*, L. R., 4 C. P. 1; *ante*, p. 98; where upon the principle of *Taylor v. Caldwell*, permanent illness of an apprentice was held to be a good answer to an action of covenant on the apprenticeship deed. And a contract of personal service was held to be put an end to by the lunacy of the servant: *Grove v. Johnston*, 24 L. R., Ir. 352.

wages were to be paid only at the end of his term of service, his representatives can recover nothing for the broken period of service.

*Cutter v.
Powell.*

Thus (*q*) where P., being at Jamaica, subscribed and delivered to C. the following note:—"Ten days after the ship *Governor Parry*, myself master, arrives at Liverpool, I promise to pay to Mr. T. Cutter the sum of thirty guineas, provided he proceeds, continues and does his duty as second mate in the said ship from hence to the port of Liverpool." C. went on board and did his duty from 31st July to 20th September, when he died before the ship reached Liverpool. His representative brought an action for his wages for the period during which he had served, but it was held that, C. not having completed the voyage, his representative could not recover any wages. And Ashhurst, J., said,—“Here the intestate was by the terms of his contract to perform a given duty before he could call upon the defendant to pay him anything: it was a condition precedent, without performing which the defendant is not liable. And that seems to me to conclude the question; the intestate did not perform the contract on his part; he was not indeed to blame for not doing it; but still, as this was a condition precedent, and he did not perform it, his representative is not entitled to recover.” And Lawrence, J., added,—“With regard to the common case of an hired servant, to which this has been compared, such a servant, though hired in a general way, is considered to be hired with reference to the general understanding upon the subject that the servant shall be entitled to his wages for the time he serves, though he do not continue in the service during the whole year. So, if the plaintiff in this

(*q*) *Cutter v. Powell*, 6 T. R. 320; 2 Smith's L. C. 1. In *Hollingworth v. Palmer*, 4 Exc. 267, a similar question arose, but it became unnecessary to decide it. The rights of seamen now in respect of their wages are governed by the Merchant Shipping Act, 1894 [57 & 58 Vict. c. 50], sect. 155, and following sections. See *Appleby v. Myers*, L. R., 2 C. P. 651, cited *ante*, where the plaintiff who contracted to erect certain machinery was held not entitled to recover for part which was burnt down before the whole was completed.

case could have proved any usage that persons in the situation of this mate are entitled to wages in proportion to the time they served, the plaintiff might have recovered according to that usage. But if this is to depend altogether upon the terms of the contract itself, she cannot recover anything."

Though the death of the servant dissolves the contract of service, it does not divest the servant's personal representative of rights already accrued. An engineer was engaged for the performance of a certain piece of work which it was calculated would occupy fifteen months and for which he was to receive 500*l.*, to be payable in five equal quarterly instalments. He was paid 100*l.* at the end of the first quarter, and after continuing his work he died in the middle of the fourth quarter. It was held that his death did not throw his administrator back upon a right of receiving on a *quantum meruit* only, but that the administrator was entitled to recover the two stipulated quarterly payments due to the deceased at the time of his death (*r*).

*Stubbs v.
Holywell
Railway Co.*

OF THE MASTER'S DUTY TO SUPPLY FOOD AND MEDICINE TO THE SERVANT.

At common law the duty of a master or mistress to supply food and other necessities to their servants, arises solely from a contract, either express or implied, on their part to do so. And the omission to perform this duty was formerly merely a breach of contract, for which they were civilly, but not criminally, liable, except in the case of a servant of tender years (*s*). But at a meeting of all the judges (except Lord Kenyon and Rooke, J.), held 25th February, 1802, the general opinion was, that it was an indictable offence as a misdemeanor to refuse or neglect to provide sufficient food, bedding, &c., to any infant of tender years unable to provide for and take care of itself (whether such infant

Food.

Formerly omission to supply food was merely breach of contract.

Except in case of servant of tender years.

(*r*) *Stubbs v. Holywell Railway Co.*, L. R., 2 Exc. 311.

(*s*) *R. v. Ridley*, 2 Camp. 650.

were child, apprentice or servant), *whom a man was obliged by duty or contract to provide for*, so as thereby to injure its health (*t*).

R. v. Saunders.

A married woman, however, cannot be convicted of a misdemeanor in neglecting to supply even an infant servant with proper food, unless it be shown that her husband supplied her with food to give the child, and she wilfully neglected to give it. The omission to provide food is the omission of the husband, the wife being in the nature of a servant to the husband (*u*).

Sloanes' case.

In the case of the Sloanes, who were indicted in February, 1851, upon a charge of starving and otherwise ill-treating their servant-girl, who was sixteen years old, the learned judges (*v*) who tried the case considering that she was not of *tender years*, that part of the charge was abandoned (*w*).

14 & 15 Vict. c. 11.

Persons refusing or neglecting to supply necessary food to apprentices or servants, or doing bodily harm to them, guilty of a misdemeanor.

In consequence of the great scandal caused by the Sloanes' case the statute 14 & 15 Vict. c. 11 was passed (*x*). That Act was partly repealed in 1861, when the statutes relating to criminal law were consolidated (*y*). But its provisions were, at the same time, substantially re-enacted by 24 & 25 Vict. c. 100, s. 26 (*z*), whereby it is made a misdemeanor (*a*) for any person legally liable to provide apprentices or servants with necessary food, clothing, or lodging, wilfully or without lawful excuse to omit to do so; or unlawfully

(*t*) *Friend's case*, Russ. & Ry., C. C. 20. If, however, a mistress culpably neglects to supply proper food and lodging to her servant at a time when the servant is reduced to such an enfeebled state of body or mind as to be helpless, and unable to take care of herself, or is so under the dominion and restraint of her mistress as to be unable to withdraw herself from her control, and the death of the servant is caused or accelerated by such neglect, the mistress is liable to be convicted of manslaughter. *R. v. Smith*, 34 L. J., M. C. 153; *R. v. Instan*, (1893) 1 Q. B. 450.

(*u*) *R. v. Saunders*, 7 C. & P. 277.

(*v*) Coleridge and Cresswell, J.J.

(*w*) The defendants pleaded guilty to the charge of assaulting, &c., the servant, and were punished for *that*.

(*x*) The Poor Law (Apprentices, &c.) Act, 1851, *post*, in the Appendix.

(*y*) 24 & 25 Vict. c. 95.

(*z*) *Post*, in the Appendix. See also sect. 1 of the Prevention of Cruelty to Children Act, 1894, *post*, in the Appendix.

(*a*) Summary convictions for similar offences are provided for in sect. 6 of the Conspiracy and Protection of Property Act, 1875, *post*, in the Appendix.

and maliciously to do or cause to be done any bodily harm to any such apprentice or servant, so that the life of such apprentice or servant shall be endangered or the health permanently injured.

A master is legally bound to provide medical attendance for an apprentice (*b*), but not for a servant, in case of illness or accident (*c*). Lord Kenyon, indeed, was of opinion (*d*) (and it was said by Lord Alvanley (*e*), that he had reason to believe that that was not a hasty opinion, but formed upon reflection) that a master was obliged to provide for his servant in sickness and in health; and that he, therefore, was liable for medicines furnished to his servant while in his service. Not that his servant was at liberty to go abroad and contract debts for medicines, but that *whilst he was under his master's roof* the master was under a legal as well as a moral obligation to provide the necessary medicines, and to pay for such as were administered to his servant under such circumstances. And Lord Eldon (*f*) seemed disposed to follow Lord Kenyon's opinion. But subsequent decisions have laid down a different doctrine, and it may now be considered as established law that a master is *not bound* to provide medical advice for his servants, and that it makes no difference whether or not the servant be living under his master's roof. The first formal decision upon this point was made in the case of *Wennall v. Adney* (*g*), which was an action by a surgeon to recover the amount of his bill for medical attendance upon a servant of the defendant, who had his arm broken while driving the defendant's team, and who had been hired by the defendant at the yearly wages of 3*l.* 10*s.* and victuals. The

Medicine.

Master is not bound to provide medical attendance for servants.

Wennall v. Adney.

b) *R. v. Smith*, 8 C. & P. 153.

c) The case of seamen on board a ship is provided for by the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60, sects. 207 *et seq.*

d) *Searman v. Castell*, 1 Esp. 270.

e) In *Wennall v. Adney*, 3 B. & P. 252.

f) *Simmons v. Wilmott*, 3 Esp. 93.

g) 3 B. & P. 247. Lord Mansfield had indeed at *Visi Prius* held that a master was not legally bound to repay the parish for the cure of his servant: *Newby v. Wiltshire*, 2 Esp. 739; 4 Doug. 284. But the case in the text is the first decision *in hanc* upon the subject.

*Wrennall v.
Adney.*

defendant had made no express promise to pay the plaintiff, and it was held that there was no implied promise on his part to do so; and therefore the plaintiff was nonsuited, and the nonsuit was afterwards held right by the Court of Common Pleas. In giving judgment, Lord Alvanley, C. J., after stating his concurrence with the learned judge who tried the case, in thinking the defendant not liable, said that, "previous to the case of *Scarman v. Castell*, there is no authority in the law of England to be found which warrants the position contended for on the part of the plaintiff. I have no doubt whatever that *parish officers* are bound to assist where such accidents as these take place: and that the law will so far raise an implied contract against them as to enable any person who affords that immediate assistance which the necessity of the case usually requires to recover against them the amount of money expended." And Heath, J., observed, "I believe that the humanity of Lord Kenyon misled him when he adopted the doctrine upon which he decided the case of *Scarman v. Castell*. Probably, at the moment, it occurred to him that if the master was not bound to provide medical assistance for his servant, the latter would be left wholly destitute: but I am perfectly sure *it is more for the advantage of servants that the legal claim for such assistance should be against the parish officers rather than against their masters*, for the situation of many masters who are obliged to keep servants is not such as to enable them to afford sufficient assistance in cases of serious illness." And Rooke, J., added, "It must be left to the humanity of every master to decide whether he will assist his servant according to his capacity or not."

Master may
render himself
liable by his
conduct.

Since the case of *Wrennall v. Adney*, it has never, it is believed, been seriously contended that any legal liability exists on the part of the master to supply medical assistance for his servants, but in the few cases which have happened at Nisi Prius it has usually been contended, on the part of the plaintiff, that the master

has by his conduct rendered himself liable, either by calling in his own usual medical attendant, or by recognising the employment of the medical man called in by the servant. Therefore (*h*), in an action for the amount of a surgeon's bill, which contained a charge of 7*s.* 6*d.* for attending a servant of the defendant named Read, who had hurt her ankle in getting over a gate; and also a charge of 12*l.* for attending one Parry, who had acted as wet-nurse to two of the defendant's children; the defendant was held *not* liable to pay the former charge, as the plaintiff was not the regular medical attendant of the family, and had been employed by Read without the knowledge of her master or mistress. But the latter charge the defendant was held *liable* to pay: as it appeared that Parry's illness arose from suckling the defendant's youngest child, and his wife knew of the plaintiff's attendance but did not express any disapprobation of it; although it also appeared that the defendant did not know the plaintiff, and had sent the surgeon who regularly attended his family to see Parry, and had also sent her 10*s.* to pay for medicines. Mr. Justice Taunton considering that his doing so showed that he considered himself liable to take care of her in that illness, and that it must be taken that the wife had the general superintendence of the house.

It is believed, however, that no case has yet occurred in which the question has arisen in an action by a *servant* against his master, who had agreed to supply the servant with necessary food, whether the master in *such case* is bound by his contract to furnish physic to the servant in case of illness. But when the question shall arise, the decision of it must depend upon the exact nature of the contract entered into. Sometimes a master engages to supply his servant with necessary victuals, and it may be argued that necessary victuals

Cooper v.
Phillips.

Query,
whether
master who
has contracted
to supply
necessary
food is liable
to supply
medicine in
case of illness.

(*h*) *Cooper v. Phillips*, 4 C. & P. 581; and see *Sellen v. Norman*, 4 C. & P. 80.

means such victuals as may suit the state of health or infirmity in which the servant happens to be; as if a servant be in need of wine or victuals of that description which are given by way of medicine (i).

Parish liable.

In the event of illness or accident, however, happening to a pauper, the parish in which it takes place is bound to provide the necessary medical advice and assistance (j). And an overseer neglecting to provide medical assistance when required to a pauper labouring under dangerous illness is indictable, although such pauper is not in the parish workhouse, nor had previously to his illness received or stood in need of parish relief (k).

OF THE MASTER'S DUTY TO INDEMNIFY THE SERVANT FROM THE CONSEQUENCES OF OBEYING HIS ORDERS, AND
HEREIN OF THE MASTER'S LIABILITY FOR INJURIES TO
SERVANT.

In some cases in which a servant incurs loss or damage in the course of his employment he may recover from his master the amount of the loss or damage upon a contract of indemnity (l), to be implied from the contract of service (m).

(i) *Per* Lord Alvanley in *Wemall v. Adney*, 3 B. & P. 217.

(j) *Wemall v. Adney*, *ante*, p. 191; *Simmons v. Witnott*, 3 Esp. 91; and see *Watling v. Walters*, 1 C. & P. 132, as to deputy overseer's liability. And the parish cannot recover the expenses from the master: *Newby v. Wiltshire*, 2 Esp. 739; 4 Dougl. 284; nor from the parish where the pauper was settled: *Atkins v. Banwell*, 2 East, 505; *Gent v. Tompkins*, 5 B. & C. 716, note; nor may a pauper, who has met with an accident, be removed to the place of his settlement during his illness: *R. v. Bury St. Edmunds*, 10 East, 25; *R. v. Ludlow*, 4 B. & Ald. 660; *Tomlinson v. Bentall*, 5 B. & C. 738; *Paynter v. Williams*, 1 C. & M. 810. But where a servant, having met with an accident, was carried to the nearest house, which was in the next parish, that parish was held liable: *Lamb v. Bunce*, 4 M. & S. 275, until an order of removal made: *K. v. Oldland*, 4 A. & E. 929.

(k) *R. v. Warren*, Russ. & R. C. C. 48, note.

(l) In *Bree v. Royal British Nurses' Association*, (1897) 2 Ch. 272, an action of libel was brought against the editor of a newspaper in respect of an article published therein. This article had been published by the express orders of the proprietors of the newspaper, who were an incorporated association of nurses. It was held that, apart from any question of the editor's right to be indemnified by the association, the funds of the association could be lawfully applied in undertaking the defence of the action.

(m) Larger remedies have been given to workmen by statute. See the Employers' Liability Act, 1880, and the Workmen's Compensation Act, 1897, *post*, in the Appendix.

It is thus the duty of a master to indemnify his servant from the consequences of doing, in obedience to his master's orders, any act pursuant to orders which he was bound to obey; or any other act which was either lawful in itself, or which, not being in itself unlawful, might have been either lawful or unlawful, but which the servant was induced by the conduct of his master to believe to be lawful, as the rule that one wrongdoer cannot sue another for contribution (*n*) would not apply in such cases (*o*).

When master is liable to indemnify servant from consequences of obeying his commands.

Thus, if a servant, in obedience to the command of his master, commit a trespass upon the property of another, not knowing that he is doing any injury, he is nevertheless answerable for the tort as well as his master to the party injured; yet he is entitled to an action against his master for the damages he may suffer, although the master also was ignorant that the act committed was unlawful, because he is deemed the principal offender.

In respect to offences in which is involved any moral delinquency or turpitude, all parties are deemed equally guilty, and Courts will not inquire into their relative guilt. But where the offence is merely *malum prohibitum*, and is in no respect immoral, it is not against the policy of the law to inquire into the relative delinquency of the parties and to administer justice between them, although both parties are wrongdoers (*p*).

Where the defendant employed the plaintiff, who was a brickmaker, to make bricks with R.'s trademark, and

Dixon v. Fawcens.

(*n*) *Merryweather v. Nixon*, 8 T. R. 186. The rule that wrongdoers cannot have redress or contribution against each other is confined to cases where the person seeking redress must be presumed to have known that he was doing an unlawful act; *Palmer v. Wiek and Pulteneytown Steam Shipping Co.*, (1894) A. C. 318.

(*o*) *Southern v. How*, Cro. Jac. 468; *Adamson v. Jarvis*, 4 Bing. 66; *Betts v. Gibbins*, 2 A. & E. 57; *Toptis v. Grane*, 5 Bing. N. C. 636; *Collins v. Evans*, 5 Q. B. 830; *Rawlings v. Bell*, 1 C. B. 951; see *Childers v. Wooler*, 29 L. J., Q. B. 129; *Dugdale v. Lovering*, L. R., 10 C. P. 196. See also the following cases, in which the question has been whether an action for money paid would lie by a person employed against his employer: *Brittain v. Lloyd*, 14 M. & W. 762; *Bayliffe v. Butterworth*, 1 Exc. 425; *Bayley v. Wilkins*, 7 C. B. 886; *Westrop v. Solomon*, 8 C. B. 345; *Lewis v. Campbell*, *ibid.* 541.

(*p*) *Lowell v. Boston and Lowell Railroad Corporation*, 23 Pick. 33.

*Dixon v.
Fawcus*

R. filed a bill in Chancery against the plaintiff which he compromised, it was held that he might recover from the defendant the costs of the Chancery suit (*q*).

When not.

But it is conceived that a master is not bound to indemnify his servant from the consequences of an act which is *malum in se*, or which the servant knew to be unlawful, although done by him in obedience to his master's orders, as the servant was not bound to obey his master's orders in such case; and the master is only bound to indemnify an *innocent* agent. And a master is not bound to indemnify his servant from damage arising in consequence of his acting contrary to his master's order (*r*): as if a servant entrusted to sell, and expressly ordered not to warrant, does warrant, and suffers damage in consequence (*s*).

Not if servant
act contrary
to orders.

*Bunker v.
Midland
Railway Co.*

Accordingly a boy of fifteen who by the rules of a railway company was not allowed to drive, but on one occasion, by the orders of a foreman, drove a vanload of fish to market and got thrown from his seat and seriously injured, was held to have been rightly nonsuited in an action against the company, as by the rules he was forbidden to drive, and he knew that (*t*).

Implied duty
cannot be sued
on as implied
contract.

And it by no means follows that where there is a *duty* cast on the master by the law that that duty can be transformed into a matter of contract; a man may expressly contract to do his duty, but the law will not imply a contract to do it.

*Riley v.
Barendse.*

Where, therefore, an administratrix sued under 9 & 10 Vict. c. 93, alleging in her declaration that the deceased

(*q*) *Dixon v. Fawcus*, 30 L. J., Q. B. 137.

(*r*) "It seems to me revolting to good sense to say that a man can, under any ordinary circumstances, be said to be discharging his duty to his master in doing that which is in direct disobedience to his lawful orders." Hawkins, J., in *Vickers v. Great Eastern Railway Co.*, 79 L. T. Rep. 121. But it is not every breach of a master's orders that would have the effect of terminating the servant's employment so as to excuse the master from the consequences of the breach of his orders; *Whithead v. Reader*, (1901) 2 K. B. 48, which was a case under the Workmen's Compensation Act, 1897; see Appendix.

(*s*) *Per* Houghton, J., in *Southern v. How*, Cro. Jac. 471; see *Grylls v. Davies*, 2 B. & Ad. 514.

(*t*) *Bunker v. Midland Railway Co.*, 47 L. T., N. S. 476.

entered the defendant's service as porter, on the terms that the defendants would take due and ordinary care not to expose him to extraordinary danger and risk in the course of such employment, and that he was from want of such care exposed to extraordinary danger and risk, and killed, but did not give any evidence of an express contract on such terms, she was nonsuited, and the nonsuit was upheld by the Court of Exchequer, Martin, B., observing, that he had on several occasions nonsuited plaintiffs in such cases (*u*).

Riley v. Baxendale.

In ordinary cases where a servant is free (at least theoretically) to choose his master and bargain as to the terms of his service, it has been decided that on his engaging to serve he impliedly (*v*) undertakes as between himself and his master to run all the ordinary risks (*w*) of the service, including the risk of negligence on the part of a fellow-servant when he is acting in the discharge of his duty as servant of him who is the common master of both. The master is therefore not in general bound to indemnify him against the consequences of injuries sustained in the ordinary discharge of the duties for which he was hired; that is, at least, if the master provide competent fellow-servants, and tackle and machinery reasonably proper and adapted to the work in hand.

Master not liable for injuries in ordinary discharge of servant's duty.

The principle of law which exempts an employer from

Common employment.

(*u*) *Riley v. Baxendale*, 30 L. J., Exc. 87.

(*v*) *Hutchinson v. York, Newcastle and Berwick Railway Co.*, 5 Exc. 343; *Tonney v. Midland Railway Co.*, L. R., 1 C. P. 291. In *Smith v. Steele*, L. R., 10 Q. B. 125, which was an action by a pilot against his employers who were shipowners, in respect of injuries caused to him by the negligence of the defendant's servants on the ship, it was held that since under the Merchant Shipping Acts the master was compelled to employ a pilot, and the plaintiff was liable to a penalty if he refused to act as pilot when requested, and the rate of his remuneration was fixed by Act of Parliament, there was no ground for implying an agreement between him and his employers that he should take upon himself the risk of injury from negligence of his employer's servants on the ship.

(*w*) In *Mansfield v. Baddeley*, 34 L. T., N. S. 696, where the plaintiff, a dressmaker in the employ of defendant, was asked to go into the kitchen, and was there bitten by a savage dog which was usually tied up, but on this occasion was loose, it was held that the master was liable, as the risk was not an ordinary risk incidental to the service. But in America it has been held that an injury to a pointsman from use of worn-out rails for a siding was an ordinary risk: *Michigan, &c. Railway Co. v. Austin*, 40 Mich. Rep. 247.

responsibility to his servant for the consequences of the negligence of another servant in a common employment is now well settled, but it has lost a great deal of the importance which it formerly had. Claims by workmen against their employers for injuries suffered by them in the course of their employment can now generally be brought under the provisions of the Employers' Liability Act, 1880, or the Workmen's Compensation Act, 1897 (which will be found in the Appendix), and in proceedings under these Acts the defence of common employment is not open to the defendant (*x*).

*Priestley v.
Fowler.*

The first case in which the question arose was *Priestley v. Fowler* (*y*). The plaintiff in that case was a servant of the defendant in his trade of a butcher, and the defendant desired him to go with certain goods of the defendant, in a van belonging to the defendant, and conducted by another servant. The plaintiff accordingly went, but the van, being overloaded, broke down, and the plaintiff, who was riding on it, was thrown off and his thigh broken. It did not appear whether the defendant *knew* of the defects in, or overloading of, the van; the Court, therefore, was not called upon in that case (*z*) to decide how far such knowledge on his part of a defect, unknown to the servant, would make him liable. But, under the circumstances, he was held *not* liable, Lord Abinger, C. B., saying, "If the master be liable to the servant in this action, the principle of that liability will be found to carry us to an alarming extent. He who is responsible by his general duty, or by the terms of his contract, for all the consequences of negligence in a matter in which he is the principal, is responsible for the negligence of all his inferior agents. If the owner of the carriage is therefore responsible for

x But the doctrine of common employment has not been abolished, and it is competent for a workman to make it a term in his contract of service that he will not make any claim against his employer under the Employers' Liability Act, 1880, in respect of personal injuries which he may suffer in the course of his employment. *Griffiths v. Earl of Dudley*, 9 Q. B. Div. 357.

y 3 M. & W. 1: see *Winterbottom v. Wright*, 10 M. & W. 109; *Brown v. Mallett*, 5 C. B. 599, 616; *Seymour v. Maddox*, 16 Q. B. 326.

z See cases *infra* on this point.

the sufficiency of his carriage to his servant, he is responsible for the negligence of his coachmaker, or his harness-maker, or his coachman. The footman, therefore, who rides behind the carriage, may have an action against his master for a defect in the carriage, owing to the negligence of the coachmaker, or for a defect in the harness, arising from the negligence of the harness-maker, or for drunkenness, neglect or want of skill in the coachman (a) ; nor is there any reason why the principle should not, if applicable in this class of cases, extend to many others. The master, for example, would be liable to the servant for the negligence of the chambermaid, for putting him into a damp bed ; for that of the upholsterer for sending in a crazy bedstead, whereby he was made to fall down while asleep and injure himself ; for the negligence of the cook in not properly cleaning the copper vessels used in the kitchen ; of the butcher in supplying the family with meat of a quality injurious to the health ; of the builder for a defect in the foundation of the house, whereby it fell and injured both the master and the servant by the ruins. The inconvenience, not to say the absurdity, of these consequences, afford a sufficient argument against the application of this principle to the present case. But, in truth, the mere relation of the master and the servant never can imply an obligation on the part of the master to take more care of the servant than he may reasonably be expected to do of himself. He is no doubt bound to provide for the safety of his servant, in the course of his employment, to the best of his judgment, information and belief. The servant is not bound to risk his safety in the service of his master, and may, if he thinks fit, decline any service in which he reasonably apprehends injury to himself ; and in most of the cases in which danger may be incurred, if not in all, he is just as likely to be acquainted with the probability and extent of it as the master. In that sort of employment especially, which is

*Priestley v.
Fowler.*

(a) See what Pollock, C. B., said as to this in *Holmes v. Clark*, 30 L. J., Exc. 138.

*Priestley v.
Fowler.*

described in the declaration in this case, the plaintiff must have known, as well as his master, and probably better, whether the van was sufficient, whether it was overloaded, and whether it was likely to carry him safely. In fact, to allow this sort of action to prevail, would be an encouragement to the servant to omit that diligence and caution which he is in duty bound to exercise on the behalf of his master, to protect him against the misconduct or negligence of others who serve him, and which diligence and caution, while they protect the master, are a much better security against any injury the servant may sustain by the negligence of others engaged under the same master, than any recourse against the master for damages could possibly afford. We are, therefore, of opinion that the judgment ought to be arrested."

*Farwell v. The
Boston and
Worcester
Railroad
Corporation.*

The next case occurred in America (*b*). Two persons were employed by the defendants in their business, the one as an engineer to manage the engines and cars on the road, the other to manage the switches on the railway. The latter, although he was properly selected by the company as a person of due skill and reasonable diligence, negligently put or left a switch across the railway, whereby the engine and cars were thrown off the line, and the engineer was severely injured. He brought an action for the injury sustained against the company, but it was held, upon full argument, that the action was not maintainable. Shaw, C. J., in delivering judgment, went into an elaborate examination of the whole subject, which he discussed with great ability (*c*), and, among other authorities, cited, with approval, the case of *Priestley v. Fowler*.

(*b*) *Farwell v. Boston and Worcester Railroad Corporation*, 4 Metc. Rep. 49. The judgment is also printed in 3 M^Q. 316. This case has been frequently acted upon in America, though it seems that the general doctrine of the immunity of a master from responsibility for injuries received by his servant from a fellow-servant in the same employment has in some cases been carried further by the English than by the American Courts. *Hough v. Railway Co.*, 160 F. S. (10 Otto) 213. But the principle would not apply so as to prevent the wife of a fellow-servant from recovering; *Gannon v. Housatonic Railroad Co.*, 17 Amer. Rep. 82.

(*c*) See *per* Martin, B., in *Waller v. South Eastern Railway Co.*, 32 L. J., Exc. 209.

The next case in England was *Hutchinson v. The York, Newcastle and Berwick Railway Company* (d). The nature of the case sufficiently appears from the judgment of Alderson, B., who said, "The question is whether the defendants are liable for the injury occasioned to one of their own servants by a collision while he was travelling in one of their carriages in discharge of his duty as their servant; in respect of which injury they would undoubtedly have been liable if the party injured had been a stranger travelling as a passenger for hire. We think that they are not. This case appears to us to be undistinguishable in principle from that of *Priestley v. Fowler*." His lordship then proceeded to state that case; to explain the principle upon which a master is in general liable for accidents resulting from the negligence or unskilfulness of his servant, and to show that a servant could not recover against his master for injury sustained in consequence of his own unskilfulness or negligence. He then continued—"The difficulty is as to the principle applicable to the case of several servants employed by the same master, and an injury resulting to one of them from the negligence of another. In such a case, however, we are of opinion that the master is not in general responsible. Put the case of a master employing A. and B., two of his servants, to drive his cattle to market; it is admitted if, by the unskilfulness of A., a stranger is injured, the master is responsible; not so if A., by his unskilfulness, hurts himself; he cannot treat that as the want of skill of his master. Suppose, then, that by the unskilfulness of A., B. the other servant is injured while they are jointly engaged in the same service; there, we think, B. has no claim against the master; they have both engaged in a common service, the duties of which impose a certain risk upon each of them, and, in case of negligence on the part of the other,

*Hutchinson v.
The York,
Newcastle and
Berwick
Railway Co.*

(d) 5 Exc. 343. This case, it will be observed, is similar to the American case last cited in the text, which happened previously; but, as none of the American cases were cited in it, the judgment is of more value, as showing the concurrent opinion of judges of both countries, unbiassed by each other.

*Hutchinson v.
The York,
Newcastle and
Berwick
Railway Co.*

the party injured knows that the negligence is that of his fellow-servant, and not of his master. He knew when he was engaged in the service that he was exposed to the risk of injury, not only from his own want of skill or care, but on the part of his fellow-servant also, and he must be supposed to have contracted on the terms that as between himself and master he would run that risk. Now, applying these principles to the present case, it follows that the plaintiff has no title to recover. H., the deceased (c), in the discharge of his duty as one of the servants of the defendants, had put himself into one of their railway carriages under the guidance of others of their servants, and by the neglect of those other servants, while they were engaged together with him in one common service, the accident occurred. This was a risk which H. must be taken to have agreed to run when he entered into the defendants' service, and for the consequences of which therefore they are not responsible. The declaration indeed states the accident to have arisen from the combined neglect of the servants who were managing the carriages in which the deceased was travelling, and other of their servants who were managing the train with which the plaintiff's carriage came into collision; and it was argued that this allegation is divisible, and in order to sustain the declaration it would not be necessary to prove any negligence on the part of the train in which H. was travelling; but it would be sufficient to prove negligence on the part of the other train, and so it was contended that even admitting the defendants would not be liable for any neglect on the part of those who were managing the train in one of the carriages of which H. was travelling, yet there could be no principle exempting them from liability for the acts of those who, though equally with H. servants of the defendants, were not at the time of the accident engaged in any common act of service with him. But we do not think there is any real distinction between

(c) The action was brought by his administratrix, under the statute 9 & 10 Vict. c. 93.

the two cases. *The principle is, that a servant when he engages to serve a master undertakes, as between himself and his master, to run all the ordinary risks of the service, and this includes the risk of negligence upon the part of a fellow-servant when he is acting in the discharge of his duty as servant of him who is the common master of both.* The death of H. appears on these pleadings to have happened while he was acting in the discharge of his duty to the defendants as his masters, and to have been the result of carelessness on the part of one or more other servant or servants of the same masters while engaged in their service. And whether the death resulted from mismanagement of the one train or of the other, or of both, does not affect the principle; in any case it arose from carelessness or want of skill, the risk of which the deceased had, as between himself and the defendants, agreed to run. It may, however, be proper, with reference to this point to add, that *we do not think a master is exempt from responsibility to his servant for an injury occasioned to him by the act of another servant, where the servant injured was not at the time of the injury acting in the service of his master.* In such a case the servant injured is substantially a stranger, and entitled to all the privileges he would have had if he had not been a servant. It was contended that the plea in this case (*f*) is bad on special demurrer, as being but an argumentative denial of the cause of action stated in the declaration; but this objection is unfounded. Though we have said that a master is not responsible generally to one servant for any injury caused to him by the negligence of a fellow-servant while acting in one common service, yet this must be taken with the qualification that the *master shall have taken care not to expose his servants to unreasonable risk.* The servant when he engages to run the risk of his service, including those arising from the negligence of fellow-servants, has a right

*Hutchinson v.
The York,
Newcastle and
Berwick
Railway Co.*

(*f*) The plea, in substance, was that the collision took place solely by the negligence, &c., of the defendant's servants, who were severally fit and competent persons.

Hutchinson v. The York, Newcastle and Berwick Railway Co.

to understand, that the master has taken reasonable care to protect him from risk by associating him only with persons of ordinary skill and care; and the real object of the plea in this case is, to show that the defendants had discharged a duty, the omission to discharge which might have made them responsible to the deceased. The plea, therefore, appears not to be open to the objection insisted on. For these reasons we are of opinion that the plaintiff has shown no ground of action, and so our judgment must be for the defendants."

Wigmore v. Jay.

Upon similar principles it was afterwards held, in *Wigmore v. Jay* (g), that a master builder was not liable to an action at the suit of the administratrix (h) of a bricklayer who was killed by reason of the falling of the scaffold on which he was working. The scaffold was erected under the superintendence of the defendant's foreman, the defendant not being present, and was constructed by the men in the employ of the defendant, the deceased not being one of them; and the falling of the scaffold was caused by the unsoundness of one of the ledgers or horizontal poles employed in its construction.

Shipowner's liability to seamen if ship unseaworthy.

Upon somewhat similar principles, it was held, in a case (i) in which the declaration disclosed nothing more than that the plaintiff had embarked as a seaman on the

(g) 5 Exr. 351; see also *Innocent v. Peto*, 1 F. & F. 8, and *Inderman v. Dames*, L. R., 1 C. P. 274, cited *post*. In *Seymour v. Maddox*, 16 Q. B. 326, it was held on the facts as stated in the declaration, that the manager of a theatre was not liable to an action at the suit of a singer for injuries sustained by him in falling through a hole in the stage. The case has been questioned in America: *Ryan v. Fowler*, 24 New York, 410, where a factory girl, who had been injured by the fall of a privy, recovered against her master.

(h) This action was also brought under the statute 9 & 10 Vict. c. 93.

(i) *Couch v. Steel*, 3 E. & B. 402. By sect. 158 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), in every contract of service, express or implied, between the owner of a ship and the master or any seaman thereof, there shall be implied an obligation on the owner of the ship to use all reasonable means to insure the seaworthiness of the ship when the voyage commences, and to keep her in a seaworthy condition during the voyage. Section 157 also makes it a misdemeanor to send a ship to sea in an unseaworthy condition. The master's neglect to ship the stanchions and rails provided for the bulwarks by the owners does not render the ship "unseaworthy" within the Act: *Hedley v. Puckney Steamship Co.*, (1894) A. C. 222. As to the right of an employer to rely on the doctrine of common employment in the case of a breach of a statutory duty, see *Groves v. Lord Wimborne*, (1898) 2 Q. B. 402, cited *post*.

defendant's vessel, and that the vessel was not seaworthy but leaky, in consequence of which the plaintiff became wet and ill; that this disclosed no contract or legal duty of which there had been a breach the subject of an action. Lord Campbell, C. J., said, "For aught that appears on this count, the defendant may have been perfectly ignorant of the defects in the vessel, whilst the plaintiff may have examined the vessel before he engaged himself, and have known her state well. Or it may be that both parties were aware of it, and that it was their intention that the seaman should work and fare the harder and have that considered in his wages. There being no allegation of a *scienter*, if we held the defendant liable on this count, we must hold a shipowner always liable to an action from every seaman, if from any accident, a butt having started, or the like, the ship was not seaworthy. *No such action has ever been brought*; this is a case of the first impression, in support of which neither a decision nor even a dictum has been brought to our notice, nor has any legal principle been urged in its support." And he afterwards added, "that *Priestley v. Fowler* (j) seemed to be in principle the same case as this, and to establish that there is no implied contract with the seamen that the vessel is seaworthy." And Coleridge, J., said, "This is in truth a contract between master and servant, and is to be decided on the principles applicable to that relation."

In order to make out a defence based on the doctrine of common employment, the person who is sought to be made liable for injuries caused by the negligence of his servant must show not only that the injured man and the man doing the injury were engaged in a common undertaking, but also that they were engaged in the service of a common master. This was clearly decided by the House of Lords (k) in a case in which the defendants

Couch v. Steel.

Common
employment
and common
master.

(j) 3 M. & W. 1, *ante*, p. 198.

(k) *Johnson v. Lindsay & Co.*, (1891) A. C. 371. Commenting on *Wiggitt v. Fox*, 11 Exc. 832, and disapproving of *Woodhead v. Gartness Mineral Co.*, 4 Ct. Sess. Cas. (Fourth Ser.) 469. See also *Cameron v. Nystrom*, (1893) A. C. 308.

contracted to put in fireproof floors in a building which was being erected by another firm of building contractors. A servant of the building contractors who was at work on the building was injured by a servant of the defendants negligently dropping a bucket on to him, and in an action in respect of these injuries it was held that the defendants could not rely on the defence of common employment, because the relation of master and servant did not exist between them and the plaintiff. The difficulties that generally arise here are in showing that the plaintiff was in the service of the defendant (*l*). Such a service need not be for any defined term, or at fixed wages. A person who is not under any paid contract of service may nevertheless put himself under the control of an employer to act in the capacity of a servant so as to be regarded as such. This is the position of one who, as a mere volunteer, helps the servants of the defendant in their work, even though he do so without the consent or even the knowledge of the defendant. Such an one, if injured by the negligence of a servant of the defendant, is in no better position than those with whom he has associated himself in respect of their master's liability (*m*). But a person who, having an interest in what the servants are doing, goes not only to help them but also to attend to a matter in which he as well as the defendant is interested, is not in the position of a mere volunteer, and so has not bound himself to undertake the risks of the employment. As (*n*) where the owner of a heifer being conveyed on the defendants' railway assisted their servants, with the consent of the station master, in shunting the horse-box containing his heifer, and was injured in so doing by the negligence of the defendants' servants. And a general servant of A. may

Volunteer
servant.

Servant lent by
master for a
time.

l *Swainson v. North Eastern Railway Co.*, 3 Exc. D. 341; *Abraham v. Reynolds*, 5 H. & N. 113.

m *Dugg v. Midland Railway Co.*, 1 H. & N. 773, approved by the Exchequer Chamber in *Potter v. Faulkner*, 1 B. & S. 800.

n *Wright v. London & North Western Railway Co.*, 1 Q. B. D. 252; and see *Holmes v. North Eastern Railway Co.*, L. R., 4 Exc. 251.

for a time, or on a particular occasion, or for a particular purpose, be the servant of B., notwithstanding that he continues in A.'s service, and is paid by A. The question whether, for the purpose of carrying out a particular operation, the servant is the servant of A. or of B. depends upon the question under whose orders and control he was for the purposes of that operation. Ship-owners contracted with stevedores to discharge a ship, but agreed with them that the tackle of the ship used in the discharge should be worked by members of the crew, who were to be in the employment and control of the shipowners. By the negligence of a member of the crew, a winchman, so using the tackle, a labourer in the employ of the stevedores was injured. It was held (o) that as the winchman was not in the employ of the stevedores nor subject to their order and control, the shipowners remained liable for his negligence.

In the following case (p) the general master was held not liable for the negligence of a servant whom he had lent to another person for a particular purpose. The defendants lent a crane and a man to work it to a firm of wharfingers to use in loading a ship at a wharf, and by the negligence of the man working the crane a servant of the wharfingers was injured. The man working the crane received directions as to working it from the wharfingers or their servants, and the defendants had no control in the matter. It was held that as the defendants had parted with the power of controlling their servant with regard to the matter on which he was engaged, they were not responsible for his negligence while so employed. As the question of responsibility depends on the power of control, it is not material whether

(o) *Union Steamship Co. v. Claridge*, (1894) A. C. 185.

(p) *Donovan v. Laing, Wharton, &c. Syndicate*, (1893) 1 Q. B. 629, approving the principles of the decision in *Rourke v. White Moss Colliery Co.*, 2 C. P. D. 205; see also *Murray v. Currie*, L. R., 6 C. P. 24. In *Cairns v. Clyde Navigation Trustees*, 25 Ct. Sess. Cas. (Fourth Ser.) (25 Rettie) 1021, dock owners who had let out to a stevedore a crane and a man to work it, were held upon the facts not to have so parted with the control of the man as not to be his masters when he was working the crane for the stevedore.

the general master lends his servant to another in consideration of some reward or not (*q*).

Servant of one company injured by servant of another on siding in joint occupation, may recover.

Fose v. Lancashire, &c. Railway Co.

But where a workman in the employ of one railway company was engaged in repairing their carriages upon a siding belonging to another company, but in the joint occupation of both companies, and he was placed between the carriages, so that he could not see what might be coming, and was necessarily making a noise at his work, so that he could not hear, and an engine belonging to the other company came up into the siding and drove the carriages together, so that he was crushed between them and killed, and the jury found that the company to whom the engine belonged were guilty of negligence by reason that their rails were defective, and that neither the deceased nor his fellow-servants were so; it was held that his representative *might* maintain an action against that company for compensation under Lord Campbell's Act, they not having been his employers (*r*). In giving judgment in that case, Pollock, C. B., said,—“I must say now (I am speaking merely my own personal private opinion (*s*)), I think we ought to be extremely cautious how we relax the rule that was laid down in this Court originally, but which now is undoubtedly the law of the land, with respect to servants in a common employ suffering by the negligence of each other. I believe there was never a more useful decision or one of greater practical and social importance in the whole history of the law. I believe it was the law—I thoroughly understood it to be so before attention was called to it; for if it had not been so we could hardly have lived into the present century without having actions brought over and over again. No such action ever had been brought before the time when it was proposed to make a master liable in respect of one servant for the negligence of another. I think

[*q*] See also the cases of *Quarman v. Burnett*, 6 M. & W. 499; *Jones v. Mayor of Liverpool*, 14 Q. B. D. 890, and such cases, cited *post*.

[*r*] *Fose v. Lancashire and Yorkshire Railway Co.*, 2 H. & N. 728.

[*s*] Watson, B., shortly afterwards expressed the concurrence of the Court in this opinion, in *Griffiths v. Gidlow*, 3 H. & N. 648, *post*, p. 209.

we ought to be exceedingly cautious how we allow what I must say I consider to be the important benefits of that decision to be frittered away by nice distinctions, or to be broken in upon by the ingenuity of advocates or by the verdicts even of juries."

Rose v. Lancashire, &c. Railway Co.

So, again, where a railway station, which was used both by the Great Western Railway Company and the London and North Western Railway Company, but was under the charge of a servant of the latter company, and a train belonging to the Great Western Railway Company, and driven by one of their engine-drivers, having been improperly and negligently shunted into a siding, injured the plaintiff, who was a servant of the London and North Western Railway Company engaged in cleaning carriages on the siding. It was held that the plaintiff might maintain an action against the Great Western Railway Company for damages, the injury having been caused by the negligence of the engine-driver in the discharge of his ordinary duty to them, and not in the course of any common employment with the plaintiff (*t*).

Warburton v. Great Western Railway Co.

However, where (*u*) the plaintiff was, with other workmen in the employ of the defendant, engaged in sinking a mine, and was at the bottom of the pit, and assisted in filling a tub with water which was drawn up to the top to be emptied, and through something occurring at the top, where his fellow-workmen were employed to empty it, it fell down upon the plaintiff and injured him; it was held that he could not sue the defendant for the injury. In that case there was some evidence that the plaintiff was himself contributory to the accident, as he knew that the hook by which the barrel was attached to the tackle to be drawn up was unsafe, and made no complaint; and moreover the defendant had supplied a proper apparatus which the plaintiff's fellow-workmen neglected to use. There was no evidence that the defendant had

Miner injured by negligence of fellow-workmen cannot recover.
Griffiths v. Gidlow.

(*t*) *Warburton v. Great Western Railway Co.*, L. R., 2 Exc. 30.

(*u*) *Griffiths v. Gidlow*, 3 H. & N. 648.

*Griffiths v.
Gidlow.*

given any directions to that effect. It was thought by the Court of Exchequer that to hold the defendant liable would be utterly to fritter away the rule that a master is not responsible for injury caused to one servant by the negligence of another.

*Bartonshall
Coal Co. v.
Reid.*

And a similar decision was arrived at by the House of Lords, in the following case (*v*):—The appellants were the owners of a coalpit, Reid and M'Guire were miners in their service. According to the usual course of working the coals in this pit, the miners were let down into and drawn up from the pit in a cage, which was worked by a rope running over a pulley, fixed by machinery, at a considerable height above the mouth of the pit, and worked by a stationary steam-engine, fixed at a few yards' distance from the pit. S. was the engine-man employed by the appellants to attend to this engine, and it was his duty to attend to the drawing up and letting down of the cage, so that the workmen might be moved up and down safely; but he disregarding his duty when the cage was coming up, when two workmen, Reid and M'Guire, were in it, negligently omitted to take the proper means for stopping it at a few feet above the mouth of the pit, where there was a platform on which the men ought to have got out, and allowed it to be carried with great force to the top of the machinery, in consequence of which it was upset, and the men thrown out and killed. It was held by the House of Lords, after a long and elaborate discussion and consideration of all the English and Scotch cases, that the representatives of neither of them could maintain any action against the owners of the coalpit. And that there was no difference, in this respect, between the law of England and Scotland. There appeared to be no doubt but that S. and the miners were engaged in a common work.

(*v*) *Bartonshall Coal Co. v. Reid*, 3 M'Q. 266; *Same Company v. M'Guire*, 3 M'Q. 300. The Judgment of Lord Cranworth, L. C., in *Reid's case*, deserves an attentive perusal; he was two years deliberating over it; not that he had any doubt about the non-liability of the master, but from other causes; see also *Woods v. Matheson*, 4 M'Q. 215.

Considerable difficulty, however, has arisen, and must hereafter arise, in deciding in particular cases what constitutes servants of the same master, fellow-workmen or *collaborateurs*, as they are sometimes called, within the meaning of the rule laid down in *Priestley v. Fowler*, and the cases which have followed it. The cases already cited as instances of the application of the rule afford great assistance in determining this question, and further aid may be derived from the following dicta of judges on the subject:—

Who are fellow-workmen engaged in common object.

“It is not necessary for this purpose,” said Lord Cranworth, in *Bartonshill Coal Company v. Reid (w)*, “that the workman causing and the workman sustaining the injury should both be engaged in performing the same or similar acts. The driver and the guard of a stage-coach, the steersman and the rowers of a boat, the workman who draws the red-hot iron from the forge and those who hammer it into shape, the engineman who conducts a train and the man who regulates the switches or the signals, are all engaged in common work. And so in this case, the man who lets the miners down into the mine, in order that they may work the coal, and afterwards brings them up, together with the coal which they have dug, is certainly engaged in a common work with the miners themselves. They are all contributing directly to the common object of their common employer in bringing the coal to the surface.”

And Lord Chelmsford, in *M'Guire's case (x)*, said, “It is necessary in each particular case to ascertain whether the servants are fellow-labourers in the same work; because, although a servant may be taken to have engaged to encounter all risks which are incident to the service which he undertakes, yet he cannot be expected to anticipate those which may happen to him on occasions foreign to his employment. Where servants, therefore,

Bartonshill Co. v. M'Guire.

(w) 3 M.Q. 295, *supra*. See also the definition given by Brett, L. J., in *Charles v. Taylor*, 3 C. P. D. 492, and the cases cited in *The Petrel*, (1893) P. 320.

(x) *Per* Lord Chelmsford in *Bartonshill Co. v. M'Guire*, 3 M.Q. 307.

*Bertonskill
Coal Co. v.
M'Guire.*

are engaged in different departments of duty, an injury committed by one servant upon the other, by carelessness or negligence, in the course of his peculiar work, is not within the exception, and the master's liability attaches in that case in the same manner as if the injured servant stood in no such relation to him. There may be some nicety and difficulty in particular cases, in deciding whether a common employment exists, but in general, by keeping in view what the servant must have known or expected to have been involved in the service which he undertakes, a satisfactory conclusion may be arrived at."

Servants of
same master
engaged in
different
occupations.

*M'Naughton
v. Caledonian
R. Co.*

This dictum of Lord Chelmsford agrees with what was said by the Lord Ordinary in *M'Naughton v. The Caledonian Railway Company (y)*. "It may be," said he, "that the two persons, viz., the wrongdoer and the injured, though both at the time servants of one master, are engaged in different operations and in distinct departments of work. A dairymaid is bringing home milk from the farm, and is carelessly driven over by the coachman. A painter or slater is engaged at his work on the top of a high ladder placed against the side of a country-house, and is injured by the carelessness of the gardener, who wheels his barrow against the ladder and upsets it. A clerk in a shipping company's office is sent on board a ship belonging to the company with a message to the captain, and he meets with injury by falling through a hatchway which the mate has carelessly left unfastened, though apparently closed. A ploughman is at work on a piece of ground held by a railway company, and adjacent to a railway, and is while in the employment of the company killed by an engine, which, through the rashness or carelessness of the engine-driver, leaps from the line of rails into the field. In such and similar cases it could hardly be contended that the rule laid down in *Priestley v. Fowler* would apply."

Numerous other cases of a similar nature have occurred Other cases. which it seems sufficient to refer to shortly. Thus the captain of a ship and the crew (*z*): the guard of a railway train and a ganger of platelayers (*a*): a labourer employed in loading trucks and a deputy foreman of platelayers (*b*): one of a gang of scaffolders and the foreman of the gang (*c*): a carpenter and joiner employed in painting an engine shed near a turntable, and the company's servants engaged in managing traffic, who negligently turned a carriage on the turntable and upset a ladder whereby the painter was thrown down and injured (*d*): a miner and an underlooker whose duty it was to superintend the mining operations (*e*): a workman employed by an engine-maker, and the foreman who ordered him to get on a travelling crane moving on a tramway, which fell and injured the workman (*f*): a manager of barges and a man employed lowering sacks (*g*): a general traffic manager and a milesman (*h*), have been held to be fellow-servants within the rule laid down in *Priestley v. Fowler*. But a compulsory pilot is not a fellow-servant of the crew (*i*): nor are an engine-driver and a signalman on joint staff of two railways with one station (*k*): nor are the crew of a tug and the crew of the tow (*l*): nor the crews of two ships colliding with each other, though belonging to the same owner (*m*).

(*z*) *Hedley v. Pinkney & Sons Steamship Co.*, (1894) A. C. 222.

(*a*) *Waller v. South Eastern Railway Co.*, 2 H. & C. 102.

(*b*) *Lovegrove v. London, Brighton and South Coast Railway Co.*, 16 C. B., N. S. 669.

(*c*) *Gallagher v. Piper*, *ibid.*

(*d*) *Morgan v. Vale of Neath Railway Co.*, 1 L. R., 1 Q. B. 149; see *Murphy v. Smith*, 19 C. B., N. S. 361; *Tanney v. Midland Railway Co.*, 1 L. R., 1 C. P. 291.

(*e*) *Hall v. Johnson*, 3 H. & C. 589.

(*f*) *Feltham v. England*, 1 L. R., 2 Q. B. 32.

(*g*) *Lovell v. Howell*, 1 C. P. D. 161.

(*h*) *Conway v. Belfast and Northern Counties Railway Co.*, Ir. Rep., 11 C. L. 345; see also *Skerrit v. Sealtan*, Ir. Rep., 11 C. L. 389; *McCarthy v. British Shipowners Co.*, 10 L. R., Ir. 384.

(*i*) *Smith v. Steele*, 1 L. R., 10 Q. B. 125.

(*k*) *Swainson v. North Eastern Railway Co.*, 3 Exc. D. 341. See *Charles v. Taylor*, 3 C. P. D. 492.

(*l*) *Bland v. Ross*, 14 Moo. P. C. 210; approved in *Spaight v. Tedcastle*, 6 App. Cas. 217.

(*m*) *The Petrel*, (1893) P. 320.

Deputy master
or vice-
principal.

At one time, and more especially in the Courts of Scotland, there was some doubt whether a person whose duty it was to superintend his employer's business should not be considered to stand in the position of a deputy-master or vice-principal, rather than that of a fellow-servant, with those persons who were employed by his master in subordinate positions, and on this ground it was thought that the common master ought to be held liable for his deputy's negligence when injury was thereby caused to other persons in the master's service. But in 1868 this doctrine was finally exploded (*n*), and a manager or foreman must now be considered to be as much a servant as those whose work he superintends.

In one case (*o*) since that decision of the House of Lords it appears that an attempt was made to argue that a corporation, who can only act through a manager, is in a somewhat different position in this respect from a master who is an individual person: but on the remark of Blackburn, J., that that could not make any difference, the argument was dropped. And in an action by the administratrix of a seaman washed overboard and drowned through the negligence of the captain of a merchant ship, the House of Lords held that the captain, though a representative of a limited company, was a fellow-servant with the deceased (*p*).

Master liable
where he has
directed young
servant to
obey orders of
superior
servant.

Where a master employs boys and girls, or inexperienced workmen or apprentices (*q*), and directs them to act under the superintendence and to obey the orders

n) *Wilson v. Merry*, L. R., 1 H. L. Sc. 326. In the United States the law on this point seems to be different; *Northern Pacific Railroad Co. v. Peterson*, 162, U. S. 346, and see *Oakes v. Mose*, 165, U. S. 363, where it was held that the conductor of a train was not a vice-principal but was a fellow-servant with the engineer operating the locomotive of another train on the same road.

o) *Howells v. Lundore Siemens Steel Co.*, L. R., 10 Q. B. 62.

p) *Hedley v. Pinkney & Sons Steamship Co.*, (1894) A. C. 222. So, too, in *Allen v. New Gas Co.*, 1 Exc. D. 251, where a servant of a gas company sued them for damages for injuries suffered by him in his employment, the Court said that assuming the negligence of Farren (the company's manager), his negligence would be that of a fellow-servant, for which the defendants would not be liable.

q) *McMillan v. McMillan*, 23 Ct. Sess. Cas. (Sec. Ser.) 1082.

of a deputy, whom he puts in his place, it may be they are not, within the meaning of the rule, employed in a common work. They are acting in obedience to the express commands of their employers, and if he, by the carelessness of his deputy, exposes them to improper risks, it may be that he is liable for the consequences. A girl, only nine days in defendant's employ in a clay mill, was unaware of the risks from machinery. A., acting under the defendant as manager of the works, put her to remove some waste clay, while the rollers were in motion. A. ought to have done this himself; and it ought not to have been done at all till the movement of the rollers was suspended. The little girl, in attempting to remove the waste clay in obedience to A.'s order, sustained a severe injury from the rollers; for which she brought an action against the master, and he was held liable (*r*).

O'Byrne v. Burn.

Whatever the dangers of the employment which the employed undertakes, amongst them is certainly not to be numbered the risks of the employer's negligence, and the creation or enhancement of danger thereby engendered (*s*). For his own personal negligence a master is always liable to his workmen (*t*). Hence a master working with his servant and by his negligence causing injury to the servant is liable therefor. He could hardly contend that he was in the service of a common master with his own servant, and for the purposes of the rule now being considered he cannot be said to be in a common employment with him (*u*). Nor would the right of action by a servant against his master for his master's negligence

Master's liability for his own negligence.

While working with his servant.

(*r*) *O'Byrne v. Burn*, 16 Ct. Sess. Cas. (Sec. Ser) 1025, commented on in *Bartonskill Coal Co. v. Reid*, 3 M'Q. 294. See also *Hardie v. Addie*, 20 Ct. Sess. Cas. (Sec. Ser.) 553. This case, however, was settled, and not, as sometimes inaccurately stated, reversed in the House of Lords. See 21 Ct. Sess. Cas (Sec. Ser.) 1382, note. See also what is said by the Lord President in *Somerville v. Gray*, 1 Ct. Sess. Cas. (Third Ser.) 772.

(*s*) Lord Herschell in *Smith v. Baker & Sons*, (1891) A. C. 325.

(*t*) Bowen, L. J., in *Thomas v. Quartermaine*, 18 Q. B. D. 685.

(*u*) *Ashworth v. Stanwic*, 30 L. J., Q. B. 183; *Mellors v. Shaw*, 1 B. & S. 437.

be taken away by the fact that with the negligence of the master there was coupled the fact of negligence on the part of a fellow-servant of the plaintiff (*r*).

Master's duty
to employ
competent
servants.

And whilst a servant contracts with his master to bear the risks of the negligence of his fellow-servants, there is, as has been more than once laid down, a corresponding duty on the part of the employer to take due care to select competent servants. It would be most unreasonable to hold that he is exempt from liability for his servant's negligence in any case where he is not under this obligation. The obligation and the exemption are correlative, and are implied from the relation of master and servant created between the parties (*w*). And Lord Cairns (*x*), after saying that a master is not and cannot be liable to his servant unless there be negligence on the part of the master in that which he, the master, has contracted or undertaken with his servant to do, and after referring to the judgment of Jervis, C. J., in *Tarrant v. Webb* (*y*), said that "negligence cannot exist if the master does his best to employ competent persons: he cannot warrant the competency of his servants."

Negligence on the part of a fellow-servant, even a single act of negligence, may in some circumstances be evidence of his incompetence (*z*).

Safety of
premises.

The master is also under the duty of seeing that the condition of the works where he employs his servants is reasonably suitable and safe for the purpose for which the works are used (*a*).

(*r*) *Grand Trunk Railway v. Cummings*, 106 U. S. 700; *Roberts v. Smith*, 2 H. & N. 213; *Ormond v. Holland*, E., B. & E. 102.

(*w*) Lord Herschell in *Johnson v. Lindsay & Co.*, (1891) A. C. 371.

(*x*) *Wilson v. Merry*, L. R., 1 H. L. Sc. 326.

(*y*) *Tarrant v. Webb*, 18 C. B. 797. See also *McKinney v. Irish North Western Railway Co.*, Ir. R., 2 C. L. 600. According to *Shipp v. Eastern Counties Railway Co.*, 9 Exc. 223, the master is the proper judge of the number of servants requisite for any particular work.

(*z*) *McCarthy v. British Shipowners Co.* 10 L. R., Ir. 384; *Skerratt v. Seaton*, Ir. Rep., 11 C. L. 389.

(*a*) Reference may here be made to a class of cases in which it has been established that under certain circumstances one man may owe a duty to another, though there is no contract between them. The occupier of premises is under a duty to persons who may resort thereto in the course of business with which

So, a mine owner was held liable where a workman was killed by the fall of a large stone while he was at work underground, if in the opinion of the jury his death was occasioned by the unsafe state of the roof of the mine and the negligence or unskilfulness of the owner in having so left it when the workmen were sent to work there. But he would not have been held liable if the condition of the mine was known to the workman, so that his death, which arose from working under it, was the consequence of his own rashness, and not of any neglect of the owner (*b*).

Miner killed
by fall of
stone.

So, where miners employed at piecework in working coal while in the pit, into which they had been let down in the usual manner, remonstrated with the underground agent as to the state of the mine, complaining, among other things, that air was not adequately admitted, and also that their wages were not sufficient, and on his refusing redress they declined to work any longer, and desired to be drawn up again. The agent acceded to this, and one of the men in the course of the ascent was thrown over and killed. The jury found that the death arose from the pit not being in a safe and sufficient state. It was held by the House of Lords that the men had a right to leave their work if they thought fit, and that

Miner killed
coming up out
of mine.

the occupier is concerned, upon his invitation express or implied, to take reasonable care that the premises are in a safe condition. *Undermaur v. Dames*, L. R., 1 C. P. 274; *Miller v. Hancock* (1893), 2 Q. B. 177; *White v. France*, 2 C. P. D. 308; *Burchell v. Hickisson*, 50 L. J., Q. B. 101. The principle applies to movable as well as immovable property. The owner of a railway truck is under a duty to persons employed in unloading to take reasonable care that its condition is not so bad as to cause them injury: *Elliott v. Hall*, 15 Q. B. D. 315; so with regard to a dock company and a gangway supplied by them to a ship in their dock: *Smith v. London and St. Katharine Docks Co.*, L. R., 3 C. P. 326; and a dock company supplying a staging for painting a ship is liable for its condition to the painters using it: *Heaven v. Pender*, 11 Q. B. D. 503; and the charterer of a ship is liable for negligence in allowing the stevedore's men to use a fixed iron ladder in the hatch which is out of repair: *Marney v. Scott*, (1899) 1 Q. B. 986. In *Mowbray v. Merryweather*, (1895) 2 Q. B. 640, an employer to whom a defective chain had been negligently supplied by the defendant and whose servant was thereby injured, recovered from the defendant the amount of compensation for which he was liable, and which he had given, to the servant, and for which amount it was admitted that the defendant himself would have been liable to the servant.

(*b*) *Paterson v. Wallace*, 1 Macq. 748.

their employers were bound to take all reasonable measures for the purpose of having the shaft in a proper condition, so that the men might be brought up safely, and not having done so were liable for the consequences (*c*). If the buildings were originally badly constructed and the servant was injured by reason of such bad construction, the employer would not be liable to the workman, unless personal negligence be proved against him or some person acting by his orders for whom he is responsible (*d*).

Master's duty
to have
machinery in
order.

And where a master employs his servants in a work of danger, he is bound to exercise due care in order to have his tackle and machinery in a safe and proper condition, so as to protect them against unnecessary risks (*e*). It is no evidence of such personal negligence of the master that he has in use in his works an engine or machine less safe than some other which is in general use. Where, therefore, a sugar-refiner's labourer was killed through the fall of sugar moulds which he was raising by machinery to which *he* attached it by means of a clip which slipped off, it was held that his administratrix could not maintain an action, under Lord Campbell's Act, against his master, although it appeared that another and safer mode of raising the moulds was usual, and had been left off by the defendant (*f*). There are many kinds of work in which danger is necessarily inherent, where precautions such as would ensure safety to the workman are either impossible, or would only be attainable at an expense altogether incommensurate with the end to be accomplished. In all such cases the workman must rely upon his own nerve and skill; and in the absence of express stipulation to the contrary, the

c *Brydon v. Stewart*, 2 Macq. 30.

d *Brown v. Accrington Cotton Co.*, 34 L. J., Exc. 208. See also *Potts v. Port Carlisle Dock and Railway Co.*, 8 W. R. 524.

e Per Lord Cranworth in *Bartonhill Coal Co. v. Reid*, 3 Macq. 288. *Seayle v. Lindsay*, 11 C. B., N. S. 429. Duties of this nature are also imposed sometimes by statute, as in sects. 10 to 18 of the Factory Act, 1904, *post*, in the Appendix, and see also p. 23.

f *Dyren v. Leach*, 26 L. J., Exc. 224. See the judgment of Bramwell, B.

risk is held to be with him and not with the employer. On the other hand, there are cases in which the work is not intrinsically dangerous, but is rendered dangerous by some defect which it was the duty of the master to remedy (*g*). And in the same case Lord Herschell said: "It is quite clear that the contract between employer and employed involves on the part of the former the duty of taking reasonable care to provide proper appliances, and to maintain them in a proper condition, and so to carry on his operations as not to subject those employed by him to unnecessary risk."

Thus at common law an employer is under a duty not to make use of a negligent system, or a negligent mode of using perfectly sound machinery. A workman employed in a stone quarry was injured in blasting because, owing to a defective system, he could not get out of the way quickly enough to avoid injuries when an explosion took place. It was held (*h*) that he was entitled to recover damages against his master.

Defective
system.

And it may be the master's duty from time to time to inspect his machinery. If it were the custom of a trade to test at intervals the appliances used in it, it might be negligence on the part of a master to omit to do that which was customary and considered the reasonable thing to do. A stevedore was injured through the breaking, from wear and tear and bad welding, of a chain attached to a donkey engine used in loading the defendant's ship. A person accustomed to handle chains could on a slight examination have discovered that the chain was unfit for the use to which it was put, and the defendant who had not taken proper steps to have the chain examined and tested was held liable (*i*).

Repair of
machinery.

In *Assop v. Yates* the plaintiff was a labourer employed

(*g*) *Smith v. Baker & Sons*, (1891) A. C. 325.

(*h*) *Sword v. Cameron*, 1 Ct. Sess. Cas. (Sec. Ser.) 493; *Bartonshill Coal Co. v. M'Guire*, 3 Macq. 300; *Smith v. Baker & Sons*, (1891) A. C. 325.

(*i*) *Murphy v. Phillips*, 35 L. T., N. S. 177; and see *Howahan v. Ardnamult Steamship Co.*, 22 L. R., Ir. 55.

by the defendant in the building of a house in a street at Liverpool. A hoarding had been put up to protect the building from persons and carriages passing. The plaintiff had complained that the hoarding was too narrow, and he had not room to pass with a hod of mortar between it and a crab and cradle that had been erected there. While he was working a vehicle was coming up the street where there was plenty of room and struck the hoarding, in consequence of which he got injured. He then brought an action against his employer, but was nonsuited, as after he had complained he had continued working there voluntarily with full knowledge, and the part which the master had in the injury was too remote (*j*).

But though these are the general duties of the master, there are circumstances in which a servant cannot recover in respect of injuries suffered in consequence of defects in the machinery and appliances on which he is employed.

Master liable
for knowingly
ordering
servant to
use unsafe
tackle.

If a master order a servant to use machinery, tackle or implements, which he (the master) knows, and the servant does not know, to be unsound or unsafe, in that case the master would be liable to indemnify the servant, from the consequence of using such insecure apparatus. Thus, where a declaration alleged that the defendant was possessed of a ladder unsafe and unfit for use by any person carrying corn up the same, and the plaintiff was the defendant's servant, yet the defendant *well knowing the premises*, wrongfully and deceitfully ordered the plaintiff to carry corn up the ladder, and the plaintiff, in obedience to the order, and believing the ladder to be proper, and *not knowing the contrary*, did carry corn up for the defendant, but, by reason of its being unsafe and unfit, fell from it and was injured: it was held, on demurrer, to be sufficient, without an averment that the plaintiff had no notice that the ladder was unsafe (*k*).

(*j*) *Asstop v. Yates*, 2 H. & N. 768.

(*k*) *Williams v. Clough*, 3 H. & N. 258; and see *Potts v. Plunkett*, 9 Ir., C. L. R. 290.

So, where the declaration alleged that the defendants, well knowing that certain carcasses were diseased and infectious, employed the plaintiff, who was ignorant of that fact, to cut them up, whereby the plaintiff was injured, it was held to disclose a good cause of action (*l*). *Davies v. England.*

In an action for injuries to a servant caused by a machine alleged to be constructed unsafely and in a defective and improper manner, the declaration contained an averment that the injury was caused by reason of the negligence and default of the defendants. It was held (*m*), that, though it would have been more expedient had the declaration contained a definite averment of the deceased's ignorance, yet the declaration was sufficient without the deceased's ignorance being alleged in express terms.

And (*n*), where the injury to the plaintiff was caused by the fall of the iron door of his employer's warehouse, the Court of Appeal held that the statement of claim must allege both the knowledge of the master and the ignorance of the servant. But where a workman was employed on an elevated tramway and his employers provided no ladder or other safe means of ascending to or descending from it, and the servant in descending from it slipped and was killed by his fall, it was held (*o*) that the plaintiff was entitled to judgment on the findings of the jury that the defendants had not exercised due care to have the tramway in a safe and proper condition so as to protect their servants from unnecessary risks, that it was dangerous to descend from the tramway without a ladder, and that the deceased knew that it was dangerous.

In recent years there has been much discussion of the question of the effect of a servant's continuing to work with knowledge of a defect in the machinery or appliances of his master upon his right to recover in an *Volenti non fit injuria.*

(*l*) *Davies v. England*, 33 L. J., Q. B. 321. See also *Smully v. Glasgow and Londonderry Steam Packet Co.*, Ir. R., 2 C. L. 24.

(*m*) *Watling v. Oustler*, L. R., 6 Ex. 74.

(*n*) *Griffiths v. London and St. Katharine's Dock Co.*, 13 Q. B. D. 259.

(*o*) *Williams v. Birmingham Battery and Metal Co.*, (1899) 2 Q. B. 338.

action against his master for injuries caused by that defect. The maxim "*Volenti non fit injuria*," says Lord Herschell (*p*), "is founded on good sense and justice. One who has invited or assented to an act being done towards him cannot, when he suffers from it, complain of it as a wrong. The maxim has no special application to the case of employer and employed, though its application may well be invoked in such a case." The decision of the House of Lords in that case shows that the question whether the servant has so undertaken a risk as to bring himself within the maxim is one of fact and not of law, and this is so both at common law and in cases arising under the Employers Liability Act, 1880. In order that a man may be *volens*, it is necessary that he should thoroughly understand the nature of the risk he is going to run; but the mere fact that a man knew of a danger and yet incurred it, is not conclusive that he incurred it willingly within the meaning of the maxim (*q*). Lindley, L. J., puts the case of a workman who never in fact engaged to incur a particular danger but who finds himself exposed to it and complains of it, and he says that in his opinion such a man cannot be held as a matter of law to have impliedly agreed to incur that danger or to have voluntarily incurred it because he does not refuse to face it (*r*). But Lord Herschell goes farther (*s*), and says that where a servant has been subjected to risks owing to a breach of duty on the part of his employer, the mere fact that he continues his work, even though he knows of the risk and does not remonstrate, does not preclude his recovering in respect of the breach of duty by reason of the doctrine "*Volenti non fit injuria*." The defence arising from this

Breach of
statutory duty
by master.

p) *Smith v. Baker*, (1891) A. C. 325.

q) *Thomas v. Quartermaine*, 18 Q. B. D. 685; *Yarmouth v. France*, 19 Q. B. D. 647; *Osburne v. London & North Western Railway Co.*, 21 Q. B. D. 220; *Membery v. Great Western Railway Co.*, 14 App. Cas. 179.

r) *Yarmouth v. France*, 19 Q. B. D. 647.

s) *Smith v. Baker*, (1891) A. C. 325. See *Thruswell v. Handyside & Co.*, 20 Q. B. D. 359, and *Skipp v. Eastern Counties Railway Co.*, 9 Exc. 223.

maxim is not applicable to cases where the injury arises from the breach of a statutory duty on the part of the employer (*t*).

Contributory negligence by the servant is a defence to an action by him for injury suffered through the negligence of his master, and this is so in the case of an action under the Employers Liability Act, 1880, as well as at common law (*u*). It is the duty of the servant to exercise reasonable care in doing his work, and failure to exercise such care will be negligence on his part. "The received and usual way of directing a jury as to this, is to say that if the plaintiff could by the exercise of such care and skill as he was bound to exercise, have avoided the consequence of the defendants' negligence, he cannot recover" (*r*). But though the plaintiff may have been guilty of contributory negligence, it is a well established rule that if the defendant could, in the result by the exercise of ordinary care and diligence, have avoided the mischief which happened, the plaintiff's negligence will not excuse him (*w*).

Contributory
negligence.

Where the legislature has by statute imposed upon the master a duty for the protection of the servant, the servant may, *prima facie* (*x*), maintain an action against

Master liable
for injuries
to servant
through breach
of statutory
rules.

(*t*) *Buddeley v. Earl Granville*, 19 Q. B. D. 423.

(*u*) *Weblin v. Ballard*, 17 Q. B. D. 122. Contributory negligence is not a defence to a claim under the Workmen's Compensation Act, 1897, except so far as the injury is attributable to the workman's serious and wilful misconduct: see sect. 1, sub-sect. 2 (*c*).

(*v*) Lord Blackburn in *Dublin, Wicklow & Wexford Railway Co. v. Slatery*, 3 App. Cas. 1155. The meaning of contributory negligence and the question of the onus of proof was much discussed in *Davey v. London and South Western Railway Co.*, 12 Q. B. D. 70; *Wakelin v. London and South Western Railway Co.*, 12 App. Cas. 41; and in *Smith v. South Eastern Railway Co.*, (1896) 1 Q. B. 178.

(*w*) Lord Penzance in *Radley v. London and North Western Railway Co.*, 1 App. Cas. 758.

(*x*) The question whether an action will lie in respect of a breach of a statutory duty for which a remedy other than an action is given by the statute depends upon the intention of the legislature which is to be gathered from the whole purview of the Act: *Atkinson v. Newcastle Waterworks Co.*, 2 Exc. D. 441; *Fallace v. Falle*, 13 Q. B. D. 109. For this purpose it is material to consider whether the Act was passed in the interests of the public at large, or for the benefit of a particular class of persons: *Gorris v. Scott*, L. R., 9 Ex. 125; 43 L. J., Exc. 92; whether a penalty imposed by the statute for a breach of the duty is to enure to the benefit of the person injured by the breach: *Groves v.*

But not then
if servant
cause accident.

his master for any breach of statutory regulations, whereby he has sustained particular injury. Of this nature are actions against millowners under the Factory Acts for not properly fencing machinery, whereby work-people get injured (*y*). But even in such cases the master is not liable if the servant by his own negligence or wilful misconduct (*e.g.*, by setting the machinery in motion) cause the accident, or could have avoided the injury by the exercise of ordinary care (*z*).

Breach of
colliery rules.

Upon this ground the defendant was held not liable in the case of *Senior v. Ward* (*a*), in which the facts were these:—

Senior v.
Ward.

After the passing of the Act for the Inspection of Coal-mines (*b*), special rules were framed and duly approved of for the regulation of the defendant's colliery, and by one of these rules it was provided, that every morning, before the miners were let down the shaft into the mine, the cage, by which they were to descend, should be let down and pulled up again, heavily loaded, to test the sufficiency of the rope and of the tackling. But the defendant, who superintended the working of his colliery, instead of enforcing this rule, allowed it to be entirely neglected, and to his knowledge it had been entirely neglected by his workmen for many weeks before the accident happened, which caused the death of the deceased. The night before the accident the rope, by which the cage was suspended, being then in good condition, was injured by an accidental fire in the colliery.

Lord Womborne, 1898, 2 Q. B. 402; and such matters as the nature of the injuries likely to ensue from a breach, the amount of the penalty imposed, and the kind of person on whom it is imposed. Where a new obligation is created by statute, and a specific remedy is provided by the same statute, that statutory remedy is, as a rule, the only one: *Pasmore v. Oswaldtwistle District Council*, (1898) A. C. 387.

y Such as *Coe v. Platt*, 6 Exc. 752; 7 Exc. 460, 923; *Caswell v. Worch*, 5 E. & B. 819; *Doel v. Sheppard*, 5 E. & B. 856; *Schofield v. Schunck*, 5 E. & B. 858, note; *Holmes v. Clarke*, 7 H. & N. 937; *Bretton v. Great Western Cotton Co.*, L. R., 7 Exc. 130.

Caswell v. Worch, 5 E. & B. 819.

a 1 Ell. & Ell. 385.

b 18 & 19 Vict. c. 108. See now the Coal Mines Regulation Act, 1887, Appendix. But the alteration of this Act does not affect the principle of *Senior v. Ward*.

Next morning the deceased and other miners were let down the shaft without any testing of the rope and the tackling. If that testing had taken place, the insufficiency of the rope would have been discovered, and the men would all have been saved. But the rope broke, and the deceased, with several others, was killed on the spot. There was most culpable negligence on the part of the defendant in neglecting the rule and in keeping in his employment a banksman whom he knew habitually disregarded it. Looking to these facts *only*, although the banksman was the fellow-servant of the deceased, and both the deceased and he were employed by the defendant in the colliery as fellow-labourers, Lord Campbell said, "He should have held the defendant liable, his negligence having materially contributed to the death of the deceased. But according to the report of the learned judge who tried the cause, it was further in evidence, that gross negligence was to be imputed to the deceased himself, and that this negligence materially contributed to his death. With the exercise of ordinary prudence he would have escaped the danger, and his life would have been saved. He knew the rule for testing the rope and tackling every morning, and he knew that this rule was habitually violated; further, on the morning of the accident he and the other miners were told by the banksman that they had better examine the ropes before they went down. Nevertheless they disregarded this warning, immediately getting into the cage; the rope broke as it descended, and they were killed."

*Senior v.
Ward.*

And where an action lies for an injury caused by an omission on the part of the defendant to perform an absolute duty cast on him by statute, so that the plaintiff is not under the necessity of proving negligence on the part of any one as part of his cause of action, the defence of common employment is not open to the defendant (c).

Breach of
statutory
duty.

(c) *Groves v. Lord Wimborne*, (1898) 2 Q. B. 402.

Master not
liable if servant
not bound to
obey.

A master, moreover, is not liable to a servant for injuries sustained in the performance of orders which he was not bound to obey: *e.g.*, a servant is not bound to risk his life or limb in obedience to his master's orders: and if he do so, he (the servant) must take the consequences, his master is not liable for them (*d*).

Similar principles would, it is conceived, apply to any case in which a servant sustained injury in the discharge of duties for which he was not hired, or in acting in obedience to orders which he was not bound to obey. If, for instance, a female servant (say a lady's-maid) were ordered to stand outside an upper window and clean it, or to hold a horse, and sustained injury, it is conceived that neither she nor her representative, in case of her death, could maintain any action against her master for such injury.

One servant
liable to
another for
negligence
in course of
common em-
ployment.

Whether or not one servant is liable to another for damages arising from an accident, in the course of their common employment, is a question which it is believed has never been raised in England. But there seems no good reason why one servant should not be liable to his fellow-servant for such damages if caused by negligence. A dictum to the contrary has indeed been attributed to Pollock, C. B., in one report of *Southcote v. Stanley* (*e*), but is not to be found in another report of the same case (*f*). In 1881 it was expressly decided in Massachusetts (*g*) that a servant is liable for injury caused by his negligence to his fellow-servant. In that case it appeared that the plaintiff was at work as a carpenter in the establishment of a manufacturing corporation, putting up, by direction of the corporation, certain partitions in a room in which the corporation was conducting the business of making wire. The defendants, one, the

Osborne v.
Morgan.

(*d*) *Ante*, p. 130.

(*e*) 1 H. & N. 250.

(*f*) 25 L. J., Exc. 339. And observe what Alderson, B., is reported to have said on this point in this case.

(*g*) *Osborne v. Morgan*, 130 Mass. 102; overruling the case decided in 1855 of *Albro v. Jaquith*, 4 Gray's Rep. (Mass.) 99.

superintendent, and the others, agents and servants of the corporation, being employed in that business, negligently and without regard to the safety of persons rightfully in the room, placed a tackle, block and chains upon an iron rail suspended from the ceiling of the room, and suffered them to remain there in such a manner, and so unprotected from falling, that by reason thereof they fell upon and injured the plaintiff. Upon these facts it was held that the plaintiff was a fellow-servant of the defendants, and that the action was maintainable against them. *Osborne v. Morgan.*

In Scotland, also, the fellow-servant has been held liable (*h*).

In cases where a person has been killed, and under Lord Campbell's Act (the Fatal Accidents Act, 1846, 9 & 10 Vict. c. 93) his representative would have a right of action, that right of action is so far only a substituted right in the place of that which the deceased would have had if he had survived, that it will be barred if the deceased had accepted a sum from the defendant in full compensation for his injuries (*i*), or if by contract he had bound himself not to claim any compensation (*j*). Lord Campbell's Act.

Such being the rights and duties existing between master and servant at common law, the Employers Liability Act, 1880 (43 & 44 Vict. c. 42), was passed. By that Act, which is printed in the Appendix, the duties and liabilities of an employer towards his workman were increased in certain respects, and notably the defence of common employment was taken away from an employer in an action under that Act (*k*). That Act, however, only applies to a limited class of persons, *i.e.*, to persons coming within the definition of "workman" in sect. 8 of the Act; and by the Workmen's Compensation Acts, 1897 and 1900, workmen engaged in the employments Employers Liability Act, 1880.

(*h*) *Wright v. Roxburgh*, 2 Ct. Sess. Cas. (Third Ser.) 748.

(*i*) *Read v. Great Eastern Railway Co.*, L. R., 3 Q. B. 555.

(*j*) *Griffiths v. Earl of Dudley*, 9 Q. B. D. 357.

(*k*) The general effect of the Act was explained in *Thomas v. Quartermaine*, 18 Q. B. D. 685.

there specified are given still further increased rights of claiming compensation from their employers for personal injuries suffered by them by accidents arising out of and in the course of their employment. Proof of negligence on the part of the employer is not necessary to support a claim under these two compensation Acts.

CHAPTER V.

THE LIABILITY OF A MASTER TO THIRD PERSONS FOR THE
ACTS OF HIS SERVANT.

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IN CASES OF CONTRACT.

THE power which a servant possesses of binding his master by contracts entered into in his name is part of the general law of principal and agent. It is only upon the ground that a servant is the agent of his master, that a master can in any case be made liable upon contracts entered into by his servant, and the principle on which the liability of the master upon such contracts depends is, that the act of the servant is, in fact, the act of the master; the maxim being, *Qui facit per alium, facit per se* (a).

Servant can only bind his master as his agent.

(a) See Bac. Abr. Master and Servant, K. Where a clerk left a bag and papers belonging to his master at an inn, and left without paying his bill; it was held that the innkeeper had a lien on them as against the master: *Snead v. Watkins*, 1 C. B., N S. 267; *Robins v. Gray*, (1895) 2 Q. B. 501. Where a statute requires the signature of a contract or other document, the general rule is that the person whose signature is required may authorize an agent to sign for him: *R. v. Justices of Kent*, L. R., 8 Q. B. 305 (a notice of appeal signed by solicitor's clerk held sufficient); *Re Whitley Partners, Limited*, 32 Ch. D. 337 (memorandum of association, signed by agent verbally authorized); *Jackson v. Napper*, 35 Ch. D. 162. But the terms in which the Act is drawn may be such as to require a personal signature, so that signature by an agent would not be sufficient. Thus under sect. 6 of Lord Tenterden's Act (9 Geo. 4, c. 14), by which it is enacted that no action shall be brought whereby to charge any person upon any representation as to the character or credit of another to the intent that such person may thereby obtain credit money or goods, unless such representation be in writing signed

Incapacity of servant to contract on his own behalf, no objection to master's liability.

If contract within scope of servant's authority.

What is scope of servant's authority.

Persons, such as infants and married women, who are under certain disabilities with regard to binding themselves by their own contracts, may nevertheless *as agents* for others do acts which will be binding upon the persons for whom they act (*b*).

But as a general proposition of law, a person who does not himself enter into a contract, can only be made liable upon the contract if it was entered into by one who was his agent or servant acting within the scope of his authority (*c*).

It therefore becomes necessary to inquire what is the scope of authority entrusted to a servant with regard to binding his master upon contracts. The answer to this question involves the consideration of several others, for the authority of a servant to contract in his master's name may be given either *expressly* by deed, writing, or

by the party to be charged therewith, it has been held that signature by an agent is not a sufficient signature within the Act, even where the agent signed on behalf of a banking co-partnership which might sue and be sued in the name of its public officer: *Smyth v. Jewsbury*, L. R., 9 Q. B. 301, 360; nor in the case of an agent signing for a limited company: *Hurst v. West Riding Union Banking Co.*, (1901) 2 K. B. 560. See also *Hyde v. Johnson*, 2 Bing. N. C. 776, a decision on sect. 1 (since repealed) of the same Act.

(*b*) Co. Litt. 52 (*a*); Bac. Abr. Authority, B.; Story on Agency, ss. 7 and 8, where see the rule of the civil law. See also *Emerson v. Blanden*, 1 Esp. 142; *Paltherp v. Furnish*, 2 Esp. 511, note; *Prestwick v. Marshall*, 7 Bing. 565; *Lindus v. Bradwell*, 5 C. B. 583. As to the effect of a contract made by a married woman as agent, after the termination of her authority to act as agent, see *Summit v. Thery*, 10 M. & W. 1.

(*c*) Lord Herschell, L. C., in *Bainwell Manufacture van Carl Scheibler v. Furness*, (1893) A. C. 8. Though the contract made by a servant be one which it was within the scope of his authority to make, yet it will not be binding on his employer if a bribe has been given, or the promise of a bribe made, to the servant with a view of inducing him to act otherwise than with loyalty and fidelity to his employer. Such an agreement is a corrupt one, and is not enforceable at law, whatever the actual effect produced on the mind of the person bribed may be: *Harrington v. Victoria Graving Dock Co.*, 3 Q. B. D. 549. It is enough to prove that money has been secretly paid or promised, without any evidence of the effect produced thereby; *Shipway v. Broadwood*, (1899) 1 Q. B. 369. Any surreptitious dealing between one principal to a contract and the agent of the other principal is a fraud which entitles the last-named principal, if he comes in time, to have the contract rescinded, or if he elects not to have it rescinded, to have such other adequate relief as the Court may think right to give him: *Panama, &c. Telegraph Co. v. India Rubber, &c. Telegraph Co.*, L. R., 10 Ch. 515. If a bribe has been actually received by the servant the employer may recover it from him, and also sue the servant and the briber for damages for loss sustained by him by reason of his having entered into the contract: *Mayor, &c. of Salford v. Lever*, (1891) 1 Q. B. 168, *ante*, p. 100. See also *Hovenden v. Millhoff*, 83 L. T. Rep. 41.

word of mouth; or *by implication* from the conduct of the master (*d*). And in either of those cases it may be *general* (*i.e.*, not unqualified, but to act in all cases of a particular nature), or it may be *special* (*i.e.*, to act in one particular instance) (*e*). Again, in any of the before-mentioned cases the authority given may be either *limited* by precise instructions, or *unlimited* (*f*).

Where authority to contract in his master's name is given to a servant by deed or writing, but little difficulty is likely to arise in ascertaining the extent of his authority, except, perhaps, from some ambiguity in the expressions used in the instrument conferring it (*g*). In such cases it is the duty of the Court to explain them, and they will be construed strictly (*h*). Letters containing private instructions as to the mode in which the authority given is to be exercised (as distinguished from the instrument conferring the authority), being documents of a less formal kind, will receive in general a more liberal construction. But where a servant intending to act in conformity with his instructions has acted in a manner contrary to his master's intention, the Court will, as between him and his master, construe them in a manner favourable to the servant and against the master, if they are capable of such a construction, upon the principle that *verba fortius accipiuntur contra proferentem* (*i*).

Express
authority by
deed or
writing.

Letters of
instruction.

The effect of express verbal instructions to the servant will be considered hereafter, as it depends upon whether the servant has a general authority to act for his

Express verbal
authority.

(*d*) F. N. B. 120, G.

(*e*) *Whithead v. Tuckett*, 15 East, 408; Paley on Ag. 199.

(*f*) Paley on Ag. 2.

(*g*) *Attwood v. Munnings*, 7 B. & C. 278; *Withington v. Herring*, 5 Bing. 442; *Heraud v. Leafe*, 5 C. B. 157.

(*h*) *Howard v. Baillic*, 2 H. Bl. 618; *Murray v. East India Co.*, 5 B. & Ald. 211; *Attwood v. Munnings*, *ubi supra*; and see *Fleming v. Hector*, 2 M. & W. 172; *Cockerell v. Aucompte*, 2 C. B., N. S. 441, where a member of a coal club was held liable for coal ordered by the secretary. See also *Bryant, Poyis & Bryant v. La Banque du Peuple*, (1893) A. C. 170, 177; *Jacobs v. Morris*, (1901) 1 Ch. 261.

(*i*) Story on Ag. 74, 75; Lord Chelmsford in *Ireland v. Livingston*, L. R., 5 H. L. 416.

master, or is merely specially employed on one particular occasion.

Ratification.

If an agent has, without any authority, openly entered into a contract on behalf of his principal, the principal may ratify and adopt it so as to be deemed to be a party to the contract. This rule of law extends also to a case where the agent in making the contract without authority has not mentioned the name of his principal, but in order to bring a case within the rule, the agent must have professed to the other party to the contract that he was acting as an agent, though for an undisclosed principal. It will not be enough that the agent had in his mind an intention to contract as agent: he must have openly professed to be acting as an agent, not for himself merely (*k*).

So where an agent makes a contract purporting to sell goods in the name of a principal, but with the fraudulent intention of selling them on his own account and for his own benefit, it is competent for the principal to ratify and take the benefit of the contract as against the buyers (*l*).

To constitute a binding adoption of acts *à priori* unauthorized, besides the necessity of the act having been done on behalf of the principal, there must be full knowledge by the principal of what those acts were or such an unqualified adoption that the inference may properly be drawn that the principal intended to take upon himself the responsibility for such acts, whatever they were (*m*).

The fact that articles purchased by a servant have been used by the master will not alone make the master liable to pay for them where the previous conduct of the master was not such as to give the servant an implied

(*k*) *Keighley, Macsted & Co. v. Durant*, (1901) A. C. 240; in which is discussed the judgment reported to have been delivered in *Bird v. Brown*, 4 Exc. 786.

(*l*) *Re an Arbitration between Tiedemann and Ledermann Freyes*, (1899) 2 Q. B. 66.

(*m*) *Marsh v. Joseph*, (1897) 1 Ch. 213.

authority to pledge his credit. That fact, however, would be sufficient *prima facie* evidence to charge the master, unless he could discharge himself by showing either that the credit was given to the servant, or that the servant was supplied by him with ready money to pay for the articles purchased, and therefore had no authority to pledge his credit (*n*).

If no time is limited within which ratification by the principal is required, and ratification is made within a reasonable time, it will relate back to the time of the making of the contract (*o*).

A master cannot, however, avail himself by adoption of an act done in his name, which, in order to be valid at all, ought to have been valid *at the time it was done* (*p*). Such, for instance, as a notice to quit, since such a notice, to be good, must be one that the party to whom it is given may act upon it immediately (*q*). It is conceived, however, that even if such a notice were given, in his master's name, by a servant not authorized to give it, to a tenant from year to year, and the master ratified it and gave notice to the tenant of such ratification *before the commencement* of the last half of the tenancy, such ratification would render the notice valid (*r*): though

Notice to quit.

(*n*) *Pearce v. Rogers*, 3 Esp. 214. In *Rimell v. Sampayo*, 1 C. & P. 255, Littledale, J., thought that if the master use the articles, he ought to ascertain that his credit is not pledged; but the jury thought that the tradesman ought to ascertain that the servant had authority to pledge his master's credit. And see *Hiscox v. Greenwood*, 4 Esp. 174. In *Forman & Co. Proprietary, Limited v. Liddesdale*, (1900) A. C. 190, the plaintiffs sued for repairs done by them to the defendant's ship. They had done the repairs under a contract made with them by the defendant's agent, who, as the plaintiffs knew, had only a limited authority, and had done more repairs than the agent had power to contract for. It was held that the defendants having taken the ship as repaired and sold it did not thereby ratify the contract.

(*o*) *Bolton Partners v. Lambert*, 41 Ch. D. 295. See as to this case. *Dibbins v. Dibbins*, (1896) 2 Ch. 348; *Fleming v. Bank of New Zealand*, (1900) A. C. 577.

(*p*) As to how far the shareholders of a limited liability company can ratify an act of the directors which was *ultra vires*, though not expressly or impliedly prohibited, see *Ashbury Railway, &c. Co. v. Riche*, L. R., 7 H. L. 653.

(*q*) *Doe v. Walters*, 10 B. & C. 626; *Doe v. Goldwin*, 2 Q. B. 146; and see *per* Lord Wensleydale, in *Baron v. Denman*, 2 Exc. 188; Story on Ag. s. 246; *Jones v. Phipps*, L. R., 3 Q. B. 567.

(*r*) *Bird v. Brown*, 4 Exc. 799; *Jardine v. Leathley*, 32 L. J., Q. B. 132.

that might, perhaps, more properly be called a *fresh notice* to quit given by the master himself.

Must be of
entire con-
tract.

Where a master adopts and ratifies a contract made by his servant, he adopts it *in toto*, and cannot adopt part, and repudiate part which he had not previously authorized the servant to agree to: *e.g.*, if a man, not a horsedealer, authorize a servant to sell a horse, and expressly orders him not to warrant or sell the horse upon any condition, yet, if the servant sell the horse upon condition to be returned if not approved of by the purchaser, and the master receive the price, he thereby ratifies the contract *and the condition*; and, if the horse be returned, is bound to return the money (s).

Admission of
liability by
master.

Where a master has *admitted* his liability upon a contract made by his servant, the weight due to that admission depends on the circumstances under which it was made (t). If no other person has been induced by it to alter his condition, the master is not concluded or estopped by it, but may prove it to have been mistaken or untrue (u).

Extent of
servant's
implied
authority.

Where the authority of a servant to bind his master upon contracts arises merely by implication, the general rule is, that *the authority of a servant is co-extensive with his usual employment, and the scope of his authority is to be measured by the extent of his employment* (v). For a master who accredits a servant by employing him must abide by the effects of that credit, and will be bound by contracts made with innocent third persons in the seeming course of that employment, and on the faith of that credit, whether he intended to authorize them or not, or even if he expressly though privately forbid them: it

(s) *Ferguson v. Carrington*, 9 B. & C. 59; *Foster v. Smith*, 18 C. B. 156; *Pauling v. London and North Western Railway Co.*, 8 Exc. 867; *Romazotti v. Bowring*, 25 L. J., C. P. 30; but see *Basanquet v. Forster*, 9 C. & P. 659; *Same v. Forster*, *id.*, 665.

(t) *Newton v. Bulcher*, 12 Q. B. 921.

(u) *Newton v. Liddard*, 12 Q. B. 925; see *Heane v. Rogers*, 9 B. & C. 577; *Pickard v. Sears*, 6 A. & E. 171; *Freeman v. Cooke*, 2 Exc. 654.

(v) *Smith's Merc. Law*, Paley on Ag. 162; Poth. on Obl. by Evans, No. 456.

being a general rule of law, founded on natural justice, that where one of two innocent persons must suffer by the fraud of a third, he who enabled that third person to commit the fraud should be the sufferer (*u*). Upon this principle, where a servant usually buys for his master upon credit, and the master is in the habit of paying for goods so purchased, the master is liable to pay for any goods of a similar nature which the servant may obtain upon credit, even though, in a particular instance, the master furnish the servant with money to pay for the goods and the servant embezzle the money; or even if the servant after he has been discharged pledge his master's credit, unless the party giving credit knew that the servant was discharged (*x*); the master in fact being estopped from denying the authority of the servant to bind him (*y*). Thus, where (*z*) the defendant, who was a considerable dealer in iron, and known to the plaintiff as such, though they had never dealt together before, sent a waterman to the plaintiff for iron on trust, and paid for it afterwards. He sent the same waterman a second time with ready money, who received the goods but did not pay for them: the defendant was held liable "for the sending him upon trust the first time, and paying for the goods was giving him credit so as to charge the defendant upon the second contract" (*a*).

Master liable when servant usually buys for him upon credit and he usually pays.

Hazard v. Treadwell.

(*u*) *Ashurst, J., in Lickbarrow v. Mason*, 2 T. R. 63. This principle was acted on in *Farquharson v. King*, (1901) 2 K. B. 697. In that case timber merchants instructed a dock company with whom they warehoused their timber to accept all transfer or delivery orders signed by C., their confidential clerk. C. fraudulently sold his employers' timber to the defendants which he was enabled to do by the authority given him to sign transfer orders. The defendants bought the timber and paid the clerk for it in good faith. The Court of Appeal held that C.'s employers having enabled him by their conduct to hold himself out to the defendants as entitled to dispose of the timber, could not succeed in an action against them to recover the timber or its value.

(*x*) *Nickson v. Brohan*, 10 Mod. 109; *Anon.* 1 Show. 95; *Aishecombe v. Hundred of Spelthorne*, Holt, 460; — *v. Harrison*, 12 Mod. 346; *Sir Robert Wayland's case*, 3 Salk. 234; *Anon.* 12 Mod. 564; *Boulton v. Arlsten*, 3 Salk. 234; 1 Lord Raym. 225.

(*y*) See *per Erle, C. J., In re Swan*, 30 L. J., C. P. 113.

(*z*) *Hazard v. Treadwell*, 1 Str. 506.

(*a*) See, however, *Todd v. Robinson*, Ry. & M. 217; *Gilman v. Robinson*, Ry. & M. 226. A general agency to order goods could hardly be implied

*Wayland's
case.*

So where (b) a master used to give his servant money every Saturday to defray the charges of the foregoing week. The servant kept the money, yet *per Holt, C. J.*, "The master is chargeable: for the master, at his peril, ought to take care what servant he employs, and it is more reasonable that he should suffer for the cheats of his servant than strangers or tradesmen."

*Rusby v.
Scarlett.*

Again, where (c) a gentleman kept a book with his coachman in which were entered the articles procured by, and the sums advanced to, him; but there did not appear to be any connection between the sums advanced and the demands he was to pay: the gentleman was held liable to pay for hay and straw delivered for the use of his horses, although he had given the coachman money to pay the bills, which he had embezzled.

*Summers v.
Solomon.*

So where the defendant, a jeweller, kept a shop in the country, living himself in London, and visiting the country shop once a month to take stock, &c. The country shop was managed by a shopman, A., from whom the plaintiff had for some years been in the habit of receiving orders in the country in the defendant's name, for goods which were sent to the country shop, and afterwards were paid for by the defendant. A. absconded, went to London and ordered jewellery there of the plaintiff in the defendant's name, which he carried away with him: it was held that the previous course of dealing justified the plaintiff in assuming that A. had general authority to order goods for the shop on the defendant's

from a single recognized dealing. In most cases it would be a question for a jury whether the defendant held out the servant as his agent for the purpose of ordering the goods in question. In *Spooney v. Browning*, (1898) 1 Q. B. 528, the plaintiff on three occasions gave orders for the purchase of shares to a certain clerk of the defendants, a firm of stockbrokers. These orders the defendants executed. It was held that this was no evidence that the defendants had held out the clerk as being authorized by them to enter into binding contracts on their behalf, or to represent that the defendants would execute any orders which the clerk might accept.

(b) *See R. Wayland's case*, 3 Salk. 234; and see *Miller v. Hamilton*, 5 C. & P. 433.

(c) *Rusby v. Scarlett*, 5 Esp. 76.

credit, and that the defendant was, therefore, liable for the goods obtained by A. in London (*d*).

And if the master was originally liable for a debt incurred by his servant, he could not discharge himself by merely giving the servant money to pay it (*e*). But if the creditor should so deal with the master as to lead him to believe that the debt was discharged, the creditor might, under such circumstances, be precluded from afterwards suing the master (*f*).

Giving servant money to pay debt.

Upon similar principles the owner of a saw mill was held (*g*) bound by a contract entered into by his foreman to furnish the plaintiff with a large quantity of Scotch fir staves; as a foreman employed to conduct a business like that in which the defendant was engaged, must be taken to have a general authority to bind his master by such contracts. And a clerk left in charge of a company's office in office hours has authority to receive a notice so as to make it a communication to the company (*h*). And if a person goes to the office of a carrier and asks what a thing will be done for, and he is told by a clerk, or servant, who is transacting the business there, that it will be done for a certain sum, the master can charge no more, although he has previously ordered his clerks to charge more (*i*). The fact that the servant has made a bad bargain gives the master no equity to be relieved from it (*j*).

Tradesman bound by contract of foreman.

Winkfield v. Packington.

So again where the granary clerk to a cornfactor said "all right" when a delivery order for flour was presented, his master was held to be estopped from saying that no

Woodley v. Coventry.

(*d*) *Summers v. Solomon*, 7 E. & B. 879. Bramwell, B., did not assent to the law laid down in this case. 3 H. & N. 794.

(*e*) *Heald v. Kenworthy*, 10 Exc. 739.

(*f*) *Macfarlane v. Giannacopulo*, 3 H. & N. 860.

(*g*) *Richardson v. Cartwright*, 1 Carr. & K. 328; see *Thompson v. Bell*, 10 Exc. 10, where a joint-stock bank was held bound by an act of the manager; and *Pauling v. London and North Western Railway Co.*, 8 Exc. 867.

(*h*) *Re Brewery Assets Corporation, Truman's case*, (1894) 3 Ch. 272. In *Utzon v. Nicols*, (1894) 1 Q. B. 92, a question was raised as to the authority of a waiter in a restaurant to take charge of a guest's overcoat.

(*i*) *Winkfield v. Packington*, 2 C. & P. 599.

(*j*) *Griffiths v. Jones*, 15 Eq. 279.

property had passed for want of appropriation of the flour (*k*).

Company
bound by
contract of
manager.

*Smith v. Hull
Glass Co.*

A company established for the manufacture of glass, completely registered under 7 & 8 Vict. c. 110 (*l*), had power under their deed of settlement to appoint a *manager* of their works, &c., to "superintend and transact, under the control of the board of directors, the manufacturing business of the company," and to whom the board of directors were, by another part of the deed, authorized to delegate "such and so many of the powers thereby given to them as would enable him to carry on the said works and manufacturing business in an efficient manner." It was held that the company were liable for goods supplied to them for the purposes of their manufactures upon orders given by such manager, although there was no express delegation of authority (*m*).

or managing
director.

*Tuttedell v.
Farrham Blue
Brick and
Tile Co.*

So where seven persons signed a memorandum of association of a company for making bricks, and two of them, one professing to act as managing director, and the other as chairman of the company, engaged the plaintiff as foreman of certain brickworks, it was held, that in the absence of proof to the contrary the company must be taken to have given authority to such two persons to engage the plaintiff, and was liable to pay his wages (*n*).

Shareholder
in mine bound
by contract of
purser.

Directors
bound by
contract of
secretary.

So where goods were ordered by the purser of a mine on the cost-book principle, a shareholder was held liable (*o*).

So provisional directors have been held liable to pay for advertisements which they passed a resolution to

(*k*) *Woodley v. Coventry*, 32 L. J., Exc. 185.

(*l*) This Act was repealed by "The Companies Act, 1862," 25 & 26 Vict. c. 89, s. 205.

(*m*) *Smith v. Hull Glass Co.*, 11 C. B. 668; see also *Greenwood's case*, 3 De G., M & G. 459; *Kruse v. Nicholls*, 6 Ho. Lords Cas. 401; *Forbes v. Marshall*, 11 Exc. 166, 179; *Re Athenæum Life Assurance Co.*, 27 L. J., Ch. 829; *Agar v. Same Company*, 3 C. B., N. S. 725; *Prince of Wales Assurance Society v. Harding*, 27 L. J., Q. B. 297.

(*n*) *Tuttedell v. Farrham Blue Brick and Tile Co.*, L. R., 1 C. P. 674.

(*o*) *Graham v. Jackson*, 36 L. J., C. P. 108.

insert, and which resolution was acted on by the secretary (*p*).

So where the plaintiffs trading as S. & Co. sold goods to the defendant, who paid for them by cheque payable to S. & Co., and K. their manager indorsed the cheque "S. & Co., per K. agent," though he had no authority to do so, and the cheque was paid by the bankers, the defendants were held to be discharged (*q*).

Firm bound
by indorse-
ment of
manager.

The principle of presumptive agency on which these cases were decided has been extended to cases in which the person who assumed to act as servant was not really servant, but was considered to have been *held out* as servant by the act of the master (*r*).

Holding out
as servant.

Thus a merchant has been held bound by a payment in the usual course of business to a person found in his counting-house and appearing to be entrusted with the conduct of the business there, though it turned out that the person was never employed by him, and the money never came to his hands; for, said Lord Tenterden, "The debtor has a right to suppose that the tradesman has the control of his own premises, and that he will not allow persons to come there and intermeddle in his business without his authority" (*s*). And so a tender to a person, probably a chief clerk, in the office of an attorney, who refused to accept the amount tendered as insufficient, has been held good: being equivalent to a tender to the attorney himself (*t*). And an attorney has been held liable to refund money and pay the costs of the application where some one in his office extorted an excessive

Stranger in
counting-
house.

Tender to
person in an
attorney's
office, probably
a clerk, held
good.

(*p*) *Maddick v. Marshall*, 16 C. B., N. S. 387; 17 C. B., N. S. 829; and see *Riley v. Packington*, L. R., 2 C. P. 536.

(*q*) *Charles v. Blackwell*, 2 C. P. Div. 151.

(*r*) In *Sandeman v. Scurr*, L. R., 2 Q. B. 86, Cockburn, C. J., speaks of "the well-known principle that where a party allows another to appear before the world as his agent in any given capacity, he must be liable to any party who contracts with such apparent agent in a matter within the scope of such agency."

(*s*) *Barrett v. Deere*, Mood. & M. 200; and see *per* Maule, J., in *Smith v. Hull Glass Co.*, 11 C. B. 368; and in *Mitcheson v. Oliver*, 5 E. & B. 419.

(*t*) *Wilnot v. Smith*, Mood. & Malk. 238. In *Moffat v. Parsons*, 5 Taunt. 307, tender of payment to a servant who, in pursuance of his master's orders, refused to accept it, was held a good tender to the master.

sum for costs, although the matter did not come to his personal cognizance (*u*). And payment to a sheriff's bailiff's assistant has been held good as against the sheriff (*v*).

Implied
authority of
clerk to
endorse bills.

*Prescott v.
Flinn*.

Again, although "it may be admitted that an authority to draw does not import in itself an authority to endorse, bills, still the evidence of such authority to draw is not to be withheld from the jury, who are to determine on the whole of the evidence whether such authority to endorse exist or not (*w*). And, therefore, where the defendants' confidential clerk had been accustomed to draw cheques for them, and in one instance, at least, they had authorized him to endorse, and in two other instances had received money obtained by his endorsing in their names, a jury were held warranted in inferring therefrom that the clerk had a general authority to endorse (*x*).

*Smith v.
M'Guire*.

And in a case (*y*) in which the defendant was held liable upon a charter-party signed by his brother ("per proc. of" the defendant), whom he had left at Limerick to conduct his business, which consisted in buying up corn for shipment, Pollock, C. B., observed:—"It would be most inconvenient if a person could not go into a shop and purchase an article without first asking the shopman whether he has authority to sell it. It may be that he was merely employed to sweep the shop; but it would be absurd to apply to the general business of life the doctrine as to the necessity of ascertaining whether an agent is acting within the scope of his authority—indeed the business of London could not go on." And he afterwards said:—"When the holder of a bill has ascertained that the person who has accepted the bill as agent or by procuration is a clerk in the house, and in the course of

(*u*) *Palmer v. Evans*, 1 C. B., N. S. 151.

(*v*) *Gregory v. Cottrell*, 5 E. & B. 571.

(*w*) *Per Tindal, C. J., Prescott v. Flinn*, 9 Bing. 22.

(*x*) *Prescott v. Flinn*, *ubi supra*; and see *Barber v. Gingell*, 3 Esp. 60; *Llewellyn v. Wainwright*, 13 M. & W. 598; *Summers v. Solomon*, *supra*, p. 237.

(*y*) *Smith v. M'Guire*, 3 H. & N. 554; 27 L. J., Exc. 465.

his employment has from day to day accepted bills of that sort, that is enough, and he need not ask for his power of attorney or authority, nor whether that particular bill is on account of the firm. When you find him in the house acting and recognized as the agent of the firm, you need not make any further inquiry, and yet it may turn out that he has never accepted a bill without a schedule being laid before him in the morning of all bills that were to be accepted by him on that day. Persons are supposed to carry on their business according to the ordinary arrangement of mankind generally. If a person conducts his business as the defendant did, by an agent who acts in his absence, in my judgment it is a question for the jury whether, according to the ordinary mode in which business is carried on, the reasonable conclusion to be drawn from these circumstances is not that he had authority as a general agent, and, if so, the principal is bound, though it should turn out that he had limited the extent of the agency by certain rules and regulations."

*Smith v.
M'Guire.*

And it has been held to be no answer to a bill filed against a railway company for specific performance of an agreement entered into by an agent to allege that he was not authorized by deed under seal, where the company had acted on the agreement by entering into possession and making a railroad (*z*).

*Wilson v.
West Hartle-
pool Railway
Co.*

And a man has been held liable upon a guarantee given in his name by his son, who had signed for his father in three or four instances, and had accepted bills for him (*a*).

Guarantee.

Where a servant is employed to transact business, and has *no particular orders* with reference to the manner in which the business is to be transacted, he is considered as invested with all the authority necessary for transacting the business entrusted to him, and which is *usually*

*Servant with-
out precise
authority has
all powers
necessary and
usual in similar
cases.*

(*z*) *Wilson v. West Hartlepool Railway Co.*, 34 L. J., Ch. 241. So, *converso*, where the bill was filed by the company. *London and Birmingham Railway Co. v. Winter*, Cr. & Ph. 57.

(*a*) *Watkins v. Vince*, 2 Stark. 368.

entrusted to agents (*b*) employed in matters of a similar nature. In this respect there is no distinction whether the authority be general or special, express or implied. In each case it embraces the appropriate means to accomplish the desired end (*c*). Thus a servant sent without money to buy goods has implied authority to pledge his master's credit (*d*).

Warranty by
servant
entrusted to
sell.

Upon this principle it was held in a very old case (*e*) that if a goldsmith make plate wherein he mingles dross, so that it is not according to the standard, and send his servant to a fair to sell it, who sells it for good plate, according to the standard, an action upon the case lies against the master. And so a horse dealer has been held liable upon the warranty of his servant entrusted to sell, where the warranty was part of the transaction of sale (*f*), and evidence that he expressly told the servant not to warrant is inadmissible (*g*).

Helyear v.
Hawke.

As so also where a person, who was not a horsedealer, sent his servant with his horse to *Tattersall's* for sale, with instructions to warrant him sound, and he warranted him free from vice; the master was held liable upon the warranty, although it was contended on his behalf that the

(*b*) Story on Ag. 60; and see *per* Lord Wensleydale, in *Cor v. Midland Counties Railway Co.*, 3 Exc. 278. See *Wattson v. Fenwick*, (1893) 1 Q. B. 346, *post*.

(*c*) Story on Ag. 85, 97; *Howard v. Baillie*, 2 H. Bl. 618.

(*d*) *Tobin v. Cranford*, 9 M. & W. 716.

(*e*) *Southern v. How*, Cro. Jac. 471; *Horn v. Nicholls*, 1 Salk. 289. As to how the master is affected by fraud of his servant, see *Cornfoot v. Fowke*, 6 M. & W. 358; and other cases cited *post*.

(*f*) *Fenn v. Harrison*, 3 T. R. 760; *Pickering v. Bush*, 15 East, 38; *Helyear v. Hawke*, 5 Esp. 72; *Woodin v. Burford*, 2 Cr. & M. 391; see *Coleman v. Riches*, 16 C. B. 105. See also *Dingle v. Hare*, 29 L. J., C. P. 143; *Udell v. Atherton*, 7 H. & N. 172; *Barwick v. English Joint Stock Bank*, L. R. 2 Exc. 259.

(*g*) *Howard v. Sheward*, L. R. 2 C. P. 148. In *Biggs v. Evans*, (1894) 1 Q. B. 88, the owner of a table-top entrusted it to G. on the terms that G. was not to sell it to any one without the owner's authority. G. sold it without the owner's authority. In an action by the owner against the purchaser it was held that as by the conditions on which G. was entrusted with the table-top he could not sell it without obtaining further authority, he was acting outside his authority in selling at all, and therefore the defendant acquired no title by the sale, and the plaintiff was not estopped from disputing his title. But a person dealing with a negotiable instrument may give a valid title to it, though he is acting in fraud of the true owner: *London and Joint Stock Bank v. Simmons*, (1892) A. C. 201.

servant was but a special agent, and he having exceeded his authority, the master ought not to be bound. But, said Lord Ellenborough, C. J., "the master having entrusted the servant to sell, he is entrusted to do all that he can to effectuate the sale, and if he does exceed his authority in so doing, he binds his master" (*h*). And in another case (*i*), where the defendant's servant, who was entrusted to sell and receive the price, sold a horse *at a fair* to the plaintiff, and warranted him sound, the defendant was held liable for a breach of the warranty; and Lord Ellenborough said, "If the servant was authorized to sell the horse, and to receive the stipulated price, I think he was incidentally authorized to give a warranty of soundness. It is now most usual on the sale of horses to require a warranty, and the agent who is employed to sell, when he warrants the horse, may fairly be presumed to be acting within the scope of his authority. This is the common and usual manner in which the business is done, and the agent must be taken to be vested with power to transact the business with which he is entrusted in the common and usual manner. I am of opinion, therefore, that if the defendant's servant warranted this horse to be sound, the defendant is bound by the warranty" (*k*).

Helyear v. Hawke.

Alexander v. Gibson.

But where a tradesman, who was not a horsedealer, had a farm which was managed by a bailiff named G., and G., by his authority, sold a horse to the plaintiff, and also gave a warranty which he was not authorized to give, it was held that the defendant was not liable upon the warranty (*l*). And upon *Helyear v. Hawke*, *Alexander v. Gibson*,

Brady v. Todd.

(*h*) *Helyear v. Hawke*, 5 Esp. 72. In *Smith v. McGuire*, 3 H. & N. 563, Pollock, C. B., said, "If a man sends his servant to market to sell goods, or a horse for a certain price, and the servant sells them for less, the master is bound by it."

(*i*) *Alexander v. Gibson*, 2 Camp. 555; see 16 C. B. 113.

(*k*) And if an agent, entrusted to sell and warrant, do sell and warrant, and receive the money, but afterwards, in consequence of the goods sold not answering the warranty, return the money to the purchaser, the principal cannot treat the price as money had and received to his use, by the agent. *Murray v. Mann*, 2 Exc. 538.

(*l*) *Brady v. Todd*, 9 C. B., N. S. 592. See *Brooks v. Hassall*, 49 L. T., N. S. 569, and *Baldry v. Bates*, 1 Times L. Rep. 558.

Brady v. Todd. and *Fenn v. Harrison* being cited, Erle, C. J., said, "We understand the judges in those cases to refer to a general agent employed for a principal to carry on his business, that is, the business of horse-dealing, in which case there would be by law the authority here contended for. But the facts of the present case do not bring the defendant within this rule, as he was not shown to carry on any trade of dealing in horses: the main reliance was placed on the argument that an authority to sell is by implication an authority to do all that in the usual course of selling is required to complete a sale, and that the question of warranty is in the usual course of a sale required to be answered; and that therefore the defendant by implication gave to G. an authority to answer that question, and to bind him by his answer. It was a part of this argument, that an agent authorized to sell and deliver a horse is held out to the buyer as having authority to warrant. But on this point also the plaintiff has, in our judgment, failed. We are aware that the question of warranty frequently arises upon the sale of horses; but we are also aware that sales may be made without any warranty or even an inquiry about warranty. If we laid down for the first time that the servant of a private owner entrusted to sell and deliver a horse on one particular occasion, is, therefore, by law authorized to bind his master by a warranty, we should establish a precedent of dangerous consequence. For the liability created by a warranty, extending to unknown as well as known defects, is greater than is expected by persons inexperienced in law: and as everything said by the seller in the bargaining may be evidence of warranty to the effect of what he said, an unguarded conversation with an illiterate man sent to deliver a horse may be found to have created a liability which would be a surprise equally to the servant and the master. We therefore hold that the buyer taking a warranty from such an agent as was employed in this case takes it at the risk of being able to prove that he had the principal's authority, and if there was no authority in fact, the

law from the circumstances does not in our opinion *Brady v. Todd*. create it."

"When the facts raise the question it will be time enough to decide the liability created by such a servant as a foreman alleged to be a general agent, or such a special agent as a person entrusted with the sale of a horse in a fair or other public mart where stranger meets stranger; and the usual course of business is for the person in possession of the horse, and appearing to be the owner, to have all the powers of an owner in respect of the sale; the authority may, under such circumstances as are last referred to, be implied, though the circumstances of the present case do not create the same inference."

It may be convenient to mention in this place the case of *Stewart v. Beaumont* (*m*), though that was an action for malicious prosecution. The defendant, who was a colonel in the army, had been at Aldershot, and a soldier named K. had acted as his servant there. On leaving camp defendant left a horse behind, and told K. that if he could find a person willing to buy the horse for 17*l.* he should let defendant know, as he was ready to dispose of him for that sum. K. sold the horse to plaintiff, a respectable farmer for 10*l.*, and absconded with the money. Defendant finding plaintiff had the horse claimed it, but he refused to give it up, declaring he had bought it honestly. Defendant obtained a search warrant, having sworn to a deposition that the horse was "stolen," and that it was "concealed" on plaintiff's premises. The plaintiff was not privy to K.'s fraud, and bought honestly. The defendant denied any authority to K. to sell, and declared that his doing so was dishonest. But Erle, C. J., pointed out that K. having possession of the horse, and being held out by the defendant as having authority to sell it, K.'s dishonesty as between him and his master was quite immaterial to the question in the present case, which was reasonable and probable cause for charging the plaintiff

*Stewart v.
Beaumont.*

(*m*) 4 F. & F. 1034.

*Stewart v.
Beaumont.*

with stealing it. If either there was an authority to sell, or if defendant allowed K. to appear as having authority, then plaintiff was owner of the horse and entitled to recover : there was no reasonable or probable cause. The plaintiff recovered a verdict.

Warranty
must be part
of transaction
of sale to bind
master.

But although a warranty by a servant entrusted to sell, given at the time of sale, and *as part of the transaction of selling*, may bind the master, yet an acknowledgment to that effect, made at another time, would not bind him (*n*).

*Woodin v.
Burford.*

And where there had been a *previous bargain* between the plaintiff and the defendant, who was a horsedealer, for the sale of a horse, and the defendant's servant, being sent to deliver the horse and receive the price, gave a warranty, the defendant was held not liable (*o*).

Alteration in
warranty.

And so a master has been held not bound by an alteration in a warranty made by a servant sent to receive the price (*p*).

These two last-mentioned cases, however, depend upon the general rule, that *an implied authority cannot be extended to collateral transactions*.

Implied
authority
cannot be
extended to
collateral
transactions.

Thus, though a clerk, apprentice or shopman, may have an implied authority to receive money paid in the usual course of business, you could not from that infer an authority to receive payments *out of* the usual course of business, as deposit on a wager, payment of a mortgage, legacy or the like (*q*). So, a clerk who has authority to receive cash across the counter, has not authority to receive payments by cheque by post (*r*), or by setting off

(*n*) *Helyear v. Hawke*, 5 Esp. 72, *ante*, p. 242; *Peto v. Hague*, 5 Esp. 134; *Allen v. Dunstone*, 8 C. & P. 760; see *Dyer*, 76 *a*, citing 5 H. 7, 41 *b*.

(*o*) *Woodin v. Burford*, 2 Cr. & M. 391.

(*p*) *Strode v. Dyson*, 1 Smith, 400.

(*q*) *Sanderson v. Bell*, 2 Cr. & M. 304; and see *Sykes v. Giles*, 5 M. & W. 645, where it was held that an auctioneer, *expressly* authorized by the conditions of sale to receive a deposit, had no implied authority to receive the residue of the purchase-money. See also *Boulton v. Reynolds*, 29 L. J., Q. B. 11, where it was held that a man in possession of goods distrained for rent has no authority in law to receive the rent.

(*r*) *Kaye v. Brett*, 5 Ex. 269; see *Summers v. Solomon*, *ante*, p. 237. As a general rule, authority to an agent to receive money implies that he is to receive it in cash: *Pape v. Westcott*, (1894) 1 Q. B. 272.

amount due to his master against amount due from him, the clerk, to his master's debtor (s). So, a general manager of a railway company has no authority to enter into a contract respecting land (t). So, a clerk employed to obtain orders, is not by reason thereof authorized to receive payment for goods supplied (u); and a debtor paying him, makes him *his* agent to hand the money to the creditor, and if he fails to do so, must pay over again. So, a traveller who receives orders for goods from his employer's customers, if authorized to receive payment for them in *money*, cannot take other *goods* in payment (x).

But although an authority to accept or indorse bills would not of itself authorize a clerk to pay or receive money due on such bills; yet if in the course of his employment a clerk has, with the knowledge of his master, been allowed to do so, that would constitute a sufficient authority for that purpose, and discharge the holders of the bills (y).

And where a master gave his servant a blank cheque, and directed him to fill it up with the amount of a bill and expenses, which the clerk was to ascertain, and take up the bill; but the clerk filled up the cheque for a much larger amount, including 250*l.* which he alleged to be due to him for his salary: he was convicted of forgery (z).

Clerk filling up a cheque for too large a sum, forgery.

And a clerk to a wine merchant who is authorized by his master to sign delivery orders per procuration, and by so doing obtains possession of dock warrants relating to wine belonging to his master, cannot afterwards bind his master by obtaining an advance of money upon such dock warrants, nor is he an agent entrusted with the

Wine merchant's clerk pledging dock warrants.

(s) *Sweeting v. Pearce*, 30 L. J., C. P. 109.

(t) *Wilson v. West Hartlepool Harbour and Railway Co.*, 34 L. J., Ch. 241.

(u) *Pattock v. Warr*, 31 L. T., Rep. O. S. 86.

(x) *Howard v. Chapman*, 4 C. & P. 508.

(y) *Pole v. Leask*, 29 L. J., Ch. 888, 893; affirmed, 33 L. J., Ch. 155.

(z) *R. v. Wilson*, 2 C. & K. 527.

possession of the documents of title to goods within the meaning of the Factors Act (5 & 6 Vict. c. 39), and if he pledge the dock warrants his master may recover them from the holder (*a*).

Admission by servant may be admissible against his master.

Admissions by an agent will be admissible against his principal when made in the course of a transaction with a third party, in which he was acting as agent of his principal, provided that the making of such admission was within the scope of his agency (*b*).

But not if out of course of business.

So, in an action against pawnbrokers (*c*) to recover plate deposited with them upon a mortgage, out of the usual course of business, an admission by a shopman of the defendants' that they had the plate was held not admissible as evidence against them, for the transaction was not a transaction in the business of a pawnbroker, but a loan, as by any other lender of money at five per cent., and there was no evidence to show the agency of the shopman in private transactions, unconnected with the business of the shop. And Tindal, C. J., said, "If the transaction out of which this suit arises had been one in the ordinary trade or business of the defendants, as pawnbrokers, in which trade the shopman was agent or servant to the defendant, a declaration of such agent that his master had received the goods, *might* probably have been evidence against the master, as it *might* be held within the scope of such agent's authority to give an answer to such an inquiry made by any person interested in the goods deposited with the pawnbroker. In that case the rule laid down by the Master of the Rolls in the case of *Fairlie v. Hastings* (*d*), which may be

(*a*) *Lamb v. Attenborough*, 31 L. J., Q. B. 41. The Factors Act, 1889 (52 & 53 Vict. c. 45), applies to persons of the class ordinarily carrying on the business of mercantile agents, not to persons in the position merely of servants: *Hastings, Limited v. Pearson*, (1893) 1 Q. B. 62.

(*b*) *Kirkstall Brewery Co. v. Furness Railway Co.*, L. R. 9 Q. B. 468; *Re Decala Provident Gold Mining Co.*, 22 Ch. D. 593.

(*c*) *Gueth v. Howard*, 8 Bing. 451; 5 C. & P. 346; see *Gardner v. Mault*, 10 A. & E. 161, where the defendants were held bound by an admission by their servant of an act of bankruptcy on the part of a bankrupt.

(*d*) 10 Ves. 128; and see Story on Agency, s. 136; 1 Ph. on Ev. 382; *Price v. Marsh*, 1 C. & P. 60; *Jones v. Hart*, Lord Raym. 738.

regarded as the leading case on this head of evidence, directly applies.”

So, in an action against carriers by railway for not delivering cattle within a reasonable time, an admission made a week after the transaction by a night inspector who had charge of the night cattle trains at a station through which the trucks containing the plaintiff's cattle would pass, that he had forgotten the plaintiff's cattle, was held not to be evidence against the defendants, as he was not to be presumed to have been authorized by the company to make admissions on their behalf of things gone by (*e*).

*Great Western
Railway Co. v.
Willis.*

And it would be no answer to an action by a master against carriers for loss of, or injury to, his goods, that they had received them from a servant, and had settled with him, unless the servant was authorized by his master to settle (*f*). And an estate or farm agent employed to receive rents, and conduct such farming operations as repairing, draining, cutting timber, and the like, could not, without express authority, make admissions in writing, or otherwise, as to his employer's title, or bind him by proposals to purchase, or take on lease, the lands of another (*g*). Even an attorney, employed in a matter of business, is not an agent to make admission for his client, except after action commenced, and in matters relating to that action (*h*).

Upon similar principles it is that, although an entry made at the time when the facts recorded took place by a deceased clerk or other servant in the usual course of business, is evidence, after his decease, of the facts stated in such entry; yet if other facts, not usually stated in entries of a similar nature, happen to be mentioned in

Entry by
deceased clerk
only evidence
of facts
usually stated.

(*e*) *Great Western Railway Co. v. Willis*, 18 C. B., N. S. 748. On a question under the Truck Act colliery owners were held not bound by any act or declaration as to disposal of wages made by either the overman or the coal clerk: *Olding v. Smith*, 16 Jur. 497.

(*f*) *Coombs v. Bristol and Exeter Railway Co.*, 3 H. & N. 1.

(*g*) *Ley v. Peter*, 3 H. & N. 101.

(*h*) *Wagstaff v. Wilson*, 4 B. & Ad. 339; *Blackstone v. Wilson*, 26 L. J., Exc. 229.

making a particular entry, it is not evidence of those facts (*i*).

Implied authority is not increased by emergency of particular occasion.

Hawtayne v. Bourne.

Moreover, the *implied power* of a servant to bind his master upon contracts relating to matters within the usual scope of his employment, is *not increased by the emergency* of any particular occasion (*j*). And, therefore, where (*k*) a mining company fell into difficulties in consequence of the calls not being paid up, and the agent from want of funds was unable to pay the labourers, who applied to the magistrates and obtained warrants of distress upon the materials belonging to the mine: whereupon the agent borrowed money upon the credit of the company, and paid the wages, it was held that he had no implied authority to do so; although there were circumstances in the case from which a jury might have inferred an express authority to borrow money for the purposes of the mine.

Cox v. Midland Counties Railway Co.

So it was held in one case (*l*) that a station master had no implied authority in case of accident to bind the company by calling in a surgeon to attend on passengers, for the power to enter into such a contract was not incident to his employment. But that case has been doubted, and it has been since held that a general manager (*m*) and a chief inspector of police, who was for the time the superior of the station master (*n*), have such authority: or, at all events, that there was evidence to go to the jury that they had such authority.

(*i*) *Chambers v. Bernasconi*, 1 C. M. & R. 347; see *Price v. Earl of Tarrington*, 2 Smith's L. C. 310; 1 Ph. on Ev. ch. 7, s. 8, where all the prior cases are stated and commented on. See also *R. v. Ducknifield*, 11 Q. B. 678; *Smith v. Blakey*, L. R. 2 Q. B. 326.

(*j*) Story on Ag. 87. See further on this point the cases of tort, *post*.

(*k*) *Hawtayne v. Bourne*, 7 M. & W. 595; and see *Ricketts v. Bennett*, 4 C. B. 686; *In re German Mining Co.*, 22 L. J., Ch. 926; *Girilliam v. Twist*, (1895) 2 Q. B. 84.

(*l*) *Cox v. Midland Counties Railway Co.*, 3 Ex. 268.

(*m*) *Walker v. Great Western Railway Co.*, L. R., 2 Ex. 228. It is the duty of a railway company carrying on business to leave upon the spot some one with authority to deal on behalf of the company with all cases arising in the course of their traffic, as the exigency of the case may demand: *Giles v. Taft Vale Railway Co.*, 2 E. & B. 822, *ante*, Chap. I.

(*n*) *Laugan v. Great Western Railway Co.*, 30 L. T., N. S. 173.

It makes no difference in the master's liability that the contract is made in the *servant's name*, if in reality he were acting as agent for his master in making the contract. For parol evidence is always necessary to show that the party sued is the person making the contract and bound by it. Whether he does so in his own name, or in that of another, or in a feigned name, and whether the contract be signed by his own hand, or by that of an agent, are inquiries not different in their nature from the question who is the person who has just ordered goods in a shop. If he is sued for the price the contract is not varied by appearing to have been made by him in a name not his own (*o*).

Contract made in servant's name.

And so if a landed proprietor send his steward habitually to the neighbouring fairs and markets to make sales and purchases for him in matters connected with the management of his estate, and the steward makes all these contracts in his own name, but is universally known to have no land of his own, and to be acting solely for his employer, by his direction, and on his credit; the steward's intention to make himself the owner of articles bought on one particular occasion in the course of the same dealing could not deprive the vendor of his recourse against the master (*p*).

Servant's intention merely to bind himself.

And, since the nature of the usual employment of a servant is the measure of his implied authority, it follows that that authority can neither be limited by the *private instructions* of the master, nor controlled by any secret agreement between him and his servant. If this could be done, in what a perilous predicament would the world stand in respect of their dealings with persons who may

Effect of private orders to servant.

(*o*) *Per* Lord Denman, C. J., in *Trueman v. Loder*, 11 A. & E. 594, 595; and see *Thomson v. Davenport*, 2 Smith's L. C. 368; *Loudon v. Bradwell*, 5 C. B. 583. The general rule with regard to contracts made by agents is, that the agent may sue or be sued in respect of his privity, and the principal in respect of his interest. See *Sims v. Bond*, 5 B. & Ad. 389. Where, however, a servant or other agent has signed a written contract in his own name, he cannot give parol evidence to *discharge himself* from liability upon the contract: *Higgins v. Senior*, 8 M. & W. 834.

(*p*) See *per* Lord Denman, in *Trueman v. Loder*, 11 A. & E. 593.

Innocent third persons not affected by them.

Distinction between general and special agent.

And differences in effect of private orders in such cases.

have secret communication with their principals ! There would be an end of all dealing but with the master (*q*). Should the servant deviate from his master's orders, or be guilty of a breach of any secret agreement between himself and his master, he will be accountable to his master for any loss he may sustain thereby, but third persons cannot be affected by any limitation of the servant's authority not communicated to them (*r*). In such cases, however, it is material to bear in mind the distinction before adverted to, between a special and a *general* authority ("the latter of which does not import an unqualified authority, but that which is derived from a multitude of instances, whereas the former is confined to an individual instance") (*s*), as the legal effect of secret instructions is very different in the two cases. The difference cannot be more clearly stated than in the words used in Smith's Mercantile Law (*t*): "The authority of an agent to perform all things usual in the line of business in which he is employed cannot be limited by any private order or direction not known to the party dealing with him. The rule is directly the reverse concerning a particular agent, *i.e.*, an agent employed specially in one single transaction; for it is the duty of the party dealing with such a one to ascertain the extent of his authority; and if he do not he must abide the consequences" (*u*).

(*q*) 10 Mod. 110.

(*r*) Paley on Ag. 199; 1 Pothier on Oblig. by Evans, n. 79; see also *ib.*, n. 447, 448; *Cahill v. Dawson*, 3 C. R., N. S. 106.

(*s*) *Per* Lord Ellenborough in *Whithead v. Tuckett*, 15 East, 408; and see Paley on Ag. 199.

(*t*) Smith's Merc. Law, 10th ed. p. 139; see Story on Ag. s. 126, and note 2 to s. 127; *Hawken v. Bourne*, 8 M. & W. 710; *National Bolivian Navigation Co. v. Wilson*, 5 App. Cas. 176, at p. 209.

(*u*) Mr. Justice Story, after quoting the words in the text, adds, "This is true if the agent is not held out as possessing a more enlarged authority." Story on Agency, s. 126, note 2. In *Edmunds v. Hushell*, L. R., 1 Q. B. 97, Cockburn, C. J., speaks of "the well established principle, that if a person employs another as an agent in a character which involves a particular authority, he cannot by a secret reservation divest him of that authority." So in *Watteau v. Fenwick*, (1893) 1 Q. B. 346, the owners of a hotel were held liable to pay for cigars ordered by the manager. The licence was taken out in the manager's name, and his name was painted over the door. He had been forbidden by the defendants to buy cigars on credit, but, nevertheless, in

A servant may be regarded as the general agent of his master for all purposes within the scope of his employment. If employed for any unusual purpose, he may be looked upon as the special agent of his master (*r*). Thus, for instance, if a man were in the habit of paying for hay and straw purchased by his groom, the groom might be regarded as his general agent for the purchase of a reasonable quantity of hay and straw, and the master would be liable to pay for such hay and straw purchased by the groom, even if in a particular instance the groom acted contrary to his master's orders. But such a groom could not be looked upon as the general agent of his master, so as to render him liable to pay for *anything else* the groom might choose to buy in his master's name, the obtaining other things not being within the scope of his employment. If he were sent by his master with money to purchase beer or wine, he would be a special agent for that occasion; and if the person of whom he bought it chose to let him take it away without payment and without ascertaining that he had authority to pledge his master's credit, he must abide the consequences; the master would not be liable.

How far
servant *general*
agent of his
master, and
how far *special*.

Bearing, therefore, this distinction in mind, it may be stated as a general rule, that wherever a master has by words, conduct or demeanour held out his servant as his general agent, whether in all kinds of business or in transacting business of a particular kind, the master will be bound by the act of his servant, if within the

Implied
general
authority can-
not be limited
by private
orders.

contravention of his instructions, he bought on credit from the plaintiff cigars such as would usually be supplied to and dealt in at such an establishment as that which he managed for the defendants. In *Brocklesby v. Temperance Permanent Building Society*, (1895) A. C. 173, B. entrusted his son with securities and instructed him to raise 1,500*l.* on them. The son borrowed 3,500*l.* on them and appropriated the difference. It was held that B. could not redeem without paying the lender all that he had lent, although the lender did not know that the son had authority to borrow at all and made no inquiry.

(*r*) The nature and extent of a servant's implied authority must, however, as is obvious, frequently involve questions fit for the consideration of a jury. See *Dyer v. Pearson*, 3 B. & C. 38; *Todd v. Robinson*, Ry. & M. 217; *Gilman v. Robinson*, Ry. & M. 226; *Barnett v. Lambert*, 15 M. & W. 493; *Reynell v. Lewis*, 15 M. & W. 517; *Williams v. Pigott*, 2 Exc. 201.

scope of his usual employment, notwithstanding the servant has acted contrary to his master's orders.

*Nickson v.
Brohan.*

Thus, where (c) a master sent his servant, *who was used to transact affairs of that nature for him*, on Saturday, with a note drawn on Sir S. E., with orders to get from Sir S. E. either bank bills or money and turn them into Exchequer notes, but the servant, to save himself time and trouble, went to B., and prevailed with him to give him a bank bill for the note upon Sir S. E., and then, in pursuance of his master's orders, invested it in Exchequer notes, which he brought to his master, not letting him know but that he had gone to Sir S. E. Sir S. E. failed upon the Monday following. The question was upon whom the loss should fall, B. or the master. And the whole court were of opinion that the master was chargeable and he only, for a servant, by transacting affairs for his master, does thereby derive a general authority and credit from him; and, if this general authority should be liable to be determined for a time by any particular instructions or orders to which none but the master and servant are privy, there would be an end of all dealing but with the master.

Horsedealer
liable on
warranty of
servant,
ordered not
to warrant.

Upon similar grounds rests the distinction that if a horse dealer or a person keeping livery stables, having a horse to sell, expressly direct his servant not to warrant him, and the servant do nevertheless warrant him, still the master would be liable upon the warranty, because the servant was acting within the general scope of his authority, and the public cannot be supposed to be cognizant of any private conversation between the

(c) *Nickson v. Brohan*, 10 Mod. 109; *Ward v. Evans*, 2 Salk. 442; *Thorold v. Smith*, 11 Mod. 71, 87; see *Duke of Beaufort v. Ardd*, 12 Cl. & F. 248; *Smith v. McGuire*, 3 H. & N. 554. In *Bunch v. Great Western Railway Co.*, 17 Q. B. D. 215 (affirmed, 13 App. Cas. 31), where a question arose as to the scope of a railway porter's authority with regard to passengers' luggage, Lord Esher, M. R., said that with regard to the public, the scope of a porter's authority is to be measured by what the company deliberately allow their porters to do, and they cannot say that a porter is acting beyond the scope of his authority with regard to the public, by reason of some secret orders which they have given to him.

master and servant (*y*) ; but if the owner of a horse were to send *a stranger* to a fair *with express directions not to warrant* the horse, and the latter acted *contrary to the orders*, the purchaser could only have recourse to the person who actually sold the horse, and the owner would not be liable on the warranty, because the servant was not acting within the scope of his authority (*z*).

But not on warranty of stranger, ordered to sell, and not warrant.

Upon the same principle a gentleman, who by an agreement with his groom allowed him five guineas a year for which he was to keep the horses shod, was held nevertheless to be liable to pay a farrier's bill for shoeing his horses, as it did not appear that the farrier knew of the agreement ; and Lord Kenyon said, " That unless the farrier knew of the agreement and expressly trusted the groom it was no defence, for a tradesman has nothing to do with any private agreement between the master and servant " (*a*). And where (*b*) a gentleman contracted with his coachman, at 220*l.* a year, to provide horses and his own livery and everything connected with the carriage, but the coachman went in his master's livery to the plaintiff's stables and represented that he wanted a pair of job-horses for his master's carriage, and an agreement was made with him, at ten guineas a month, whereupon he took the horses away, and his master used them, and the plaintiff then sued the master for four months' hire ; it was held not necessary for the plaintiff to prove that the coachman acted by his master's

Precious v. Abel.

Rimell v. Sampayo.

(*y*) *Ante*, 243 ; *Fenn v. Harrison*, 3 T. R. 760 ; *Pickering v. Busk*, 15 East, 38 ; *Howard v. Sheward*, L. R., 2 C. P. 148. To the distinction pointed out in the text must be referred the judgments of Martin, B., and Bramwell, B., in *Udall v. Atherton*, 7 H. & N. 172. See *per* Willes, J., in *Barwick v. English Joint Stock Bank*, L. R., 2 Ex. 259. See STORY on AGENCY, s. 132. In note 4, that learned author says, " In America livery stable keepers are not understood to give their servants any general authority to sell their horses."

(*z*) *Ibid.* But if the master is unwilling to adopt a warranty given by his servant under such circumstances, he is bound to take back the horse and return the money, if paid. To hold otherwise would be to allow him to take advantage of his servant's fraud. *Per* Lord Abinger in *Cornfoot v. Fowke*, 6 M. & W. 381 ; and *per* Erle, C. J., in *Brady v. Todd*, *ante*, p. 244.

(*a*) *Precious v. Abel*, 1 Esp. 350.

(*b*) *Rimell v. Sampayo*, 1 C. & P. 255.

authority, as he had used the horses: and Littledale, J., said, "If the coachman made the contract in his own name, and represented to the plaintiff the agreement between himself and his master, of course, under such circumstances, the plaintiff cannot recover; but if he made no such representation of any agreement between himself and his master, I think *that by the master sending him forth into the world, wearing his livery, to hire horses which he (the master) afterwards uses, knowing of whom they were hired, and yet not sending to ascertain if his credit had been pledged for them, an implied authority is given, and the master is bound to pay the hire.* A master may be prevented by business or want of time from making a bargain himself, and may send his servant, and *provided the business be within the regular department of the servant, the master is clearly liable.*" The jury, however, *having found that there was no evidence of any direct application to the master on the part of the plaintiff*, found a verdict for the defendant (c).

If third party
know of
private order,
master not
bound.

*Jordan v.
Norton.*

If a third party, dealing with his servant on behalf of his master, *know* of the private agreement or instructions given by the master to his servant, he cannot of course charge the master (d) upon any contract contrary to that agreement. Accordingly, where (e) the defendant sent his son to obtain from the plaintiff a horse which he had agreed to sell to the defendant, and the plaintiff knew that the son was instructed only to take the horse *if* warranted, but the son took it without a warranty, it was held that the defendant was not liable to pay for the horse, which did not answer the warranty agreed to be given.

Where servant
is a special

But where a *servant* is employed by his master to act

(c) See *Hiscox v. Greenwood*, 4 Esp. 174, where a servant having acted beyond the scope of his employment, Lord Ellenborough thought the tradesman, not having inquired of the master, could not charge him.

(d) *Howard v. Braithwaite*, 1 Ves. & B. 209.

(e) *Jordan v. Norton*, 4 M. & W. 155. In this case, however, it will be observed that the son was a *special agent*, into whose authority the party dealing with him is bound to inquire.

for him in a *single transaction*, he must be regarded as the *special agent* of his master; and, in such case, it is incumbent upon every one dealing with him, who wishes to charge his master upon his contracts, to inquire into the extent of his authority, as, should he exceed it, his master will not be bound.

agent parties
dealing with
him must
inquire into
his authority.

And, therefore, where (*f*) the plaintiff sent his servant to receive 60*l.* from B., and B. desired E., who owed him money, to strike off 60*l.* from his debt and pay the plaintiff's servant; E. accordingly credited himself with 60*l.* in account with B., but instead of giving the plaintiff's servant *money* gave him a goldsmith's *note*, which the servant accepted as payment: it was held that the plaintiff was not bound by the act of the servant in receiving the note instead of money.

Ward v.
Erans.

Again, where (*g*) the defendant drew a cheque in favour of a creditor, and gave it to his own farm bailiff (who bought and sold cattle for him) with instructions to deliver it to the creditor in whose favour it was drawn, but the bailiff, at the request of the creditor, got it discounted by the plaintiff (a banker at some distance), and gave the money to the creditor; some days afterwards the bankers on whom the cheque was drawn failed, and the plaintiff having omitted to present the cheque to them, brought an action against the defendant for the amount; but Alexander, C. B., was of opinion that the defendant was not bound by the act of his farm bailiff, who had no authority to act as he had done.

Waters v.
Brogden.

And where the defendant directed a telegraph clerk to telegraph for "three" rifles, and by mistake he telegraphed for "the" rifles, and plaintiff sent fifty, the defendant was only held liable to pay for three, as the telegraph clerk was only the defendant's agent to transmit the message actually given for transmission (*h*).

Henkel v.
Pape.

(*f*) *Ward v. Erans*, 2 Lord Raym. 928.

(*g*) *Waters v. Brogden*, 1 Y. & J. 457.

(*h*) *Henkel v. Pape*, L. R., 6 Ex. 7.

*Fenn v.
Harrison.*

So, as we have seen, if the owner of a horse send a *stranger* to a fair, with express directions not to warrant the horse, and the latter act contrary to the orders, the purchaser could only have recourse to the person who actually sold the horse, and the owner would not be liable on the warranty, because the servant was a special agent, and was not acting within the scope of his authority (*i*).

And so where person dealing with him has notice that he is a special agent.

And where a person dealing with an agent has *notice*, either from the mode in which the authority is exercised, or it would seem in any other manner, that the agent is acting under a *special* authority, he is, *à fortiori*, bound to inquire whether or not the authority has been properly followed; and if he do not make such inquiries, and it turn out that the party exceeded his authority, he must suffer for his temerity (*j*).

As in a bill signed "per proe."

Thus a signature by procuration operates as a notice that the agent has but a limited authority to sign, and the principal is only bound by such signature, if the agent in so signing, was acting within the actual limits of his authority (*k*). A person, therefore, who takes a bill or note so accepted or endorsed, is bound at his peril to inquire into the extent of the agent's authority (*l*).

Written authority of servant must be inspected.

If, upon inquiry into the authority of such an agent, it should turn out that he is acting under a *written* authority, parties dealing with him should call for the production of the authority; for, should the agent exceed his authority, his principal will not be bound (*m*). This rule indeed applies equally to the case of a general agent.

(*i*) *Fenn v. Harrison*, 3 T. R. 757; see Paley on Ag. 202. But see *per* Erle, C. J., in *Brady v. Todd*, *ante*, p. 243.

(*j*) *Jordan v. Norton*, 4 M. & W. 155; *Neale v. Turtou*, 4 Bing. 149; *Forman & Co. Proprietary, Limited v. Liddesdale*, (1900) A. C. 190.

(*k*) The Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 25.

(*l*) *Alexander v. Mackenzie*, 6 C. B. 766; *Stagg v. Elthott*, 31 L. J., C. P. 260; *Bryant, Pows & Bryant, Limited v. La Banque du Peuple*, (1893) A. C. 170.

(*m*) *Attwood v. Mannings*, 7 B. & C. 278; Story on Agency, s. 72; and see the American case of *North River Bank v. Aymar*, 3 Hill R. 262, there quoted. See also *Balfour v. Ernest*, 28 L. J., C. P. 170, *et cas. ibid. cit.*

If, however, the act assumed to be done is within the authority given (in ascertaining which the authority must be *strictly* construed) (*n*), the principal will be bound, although the act done may be in violation of private instructions as to the mode of executing the authority. With such instructions third parties have nothing to do (*o*). It is therefore important to bear in mind the distinction between the two, although it is not in all cases easy to distinguish the one from the other.

Private instructions need not.

As a general rule, the maxim *delegatus non potest delegare* applies so as to prevent an agent from establishing the relationship of principal and agent between his own principal and a third person, but this maxim merely imports that inasmuch as confidence in the particular person employed is at the root of the contract of agency, the authority to delegate powers to another cannot be implied as an ordinary incident in the contract. But an authority to constitute in the interests of the principal a direct privity of contract between him and a substitute for the agent may and should be implied where, from the conduct of the parties to the original contract of agency, the usage of trade, or the nature of the particular business which is the subject of the agency, it may reasonably be presumed that the parties to the contract of agency originally intended that authority should exist, or where, in the course of the employment, unforeseen emergencies arise which impose upon the agent the necessity of employing a substitute (*p*).

Delegatus non potest delegare.

The employment of workmen or servants to do an act is not necessarily a violation of the rule *delegatus non potest delegare*. Thus, for instance, where a merchant receives goods from abroad for sale, and he deposes his

Employment of servants not a violation of rule.

(*n*) *Ante*, p. 231.

(*o*) Story on Ag. 73; *Smethurst v. Taylor*, 12 M. & W. 545.

(*p*) *De Bussche v. Alt*, 8 Ch. D. 286. See *Gwilliam v. Twiss*, (1895) 2 Q. B. 84, where a question was raised how far the driver of an omnibus, who was incapacitated from driving, had authority to employ another person to drive the omnibus home, so as to render his master liable for the acts of the person so employed.

foreman to go to the proper place for selling such goods, and the foreman sells them accordingly, in that case it would be impossible for the consignor to say that the sale was void because the merchant did not personally sell them himself, but employed another person for that purpose, by whom the sale was effected. The merchant would no doubt be answerable for all the acts of his foreman, but provided such acts were proper and within the scope of his authority they would be the acts of the merchant himself. And therefore where a proposal for a life policy was accepted on behalf of a life assurance company by their agent in Australia, who acted in the transaction through the medium of sub-agents, and the premium was paid, it was held binding on the company though the agent had no authority to appoint sub-agents, and there were some informalities but of form only (q).

Where master
is not bound
by contract of
servant.

But *where a master has not* either expressly, or by implication, from a course of dealing, *authorized his servant* to pledge his credit, his servant cannot, by so doing, render him liable to pay for goods so obtained.

Stubbing v.
Heintz.

Thus (r), where the defendant contracted with the plaintiff to serve him with meat at a certain price *for ready money*, and the cook was accustomed to order the meat, and when the bill amounted to a few shillings or a guinea, used to pay it, generally on Monday morning, and the defendant always gave her money to pay; which course of dealing continued for a long time, till at last the defendant got a cook who embezzled the money; it was held that the defendant was not liable, and Lord Kenyon, C. J., said, ‘Nothing could be clearer than that where a man gives his servant money to pay for commodities as he buys them, if the servant pockets that money, the master will not be liable to pay it over again. But if the master employs his servant to buy things on

(q) *Kossiter v. Trafalgar Life Assurance Association*, 27 Beav. 377.

(r) *Stubbing v. Heintz*, Penke, 47; and see *per* Lord Abinger, C. B., in *Fleming v. Hector*, 2 M. & W. 181.

credit, he will be liable to whatever extent the servant shall pledge his credit."

And so where (s) the defendant dealt with the plaintiff for the porter used in his family, and was in the habit of paying ready money to the plaintiff for a certain quantity which was allowed for the family, but the maid-servant obtained some clandestinely for her own use, and that of the defendant's wife's mother, but it did not appear that the plaintiff knew of this circumstance, it was held that the defendant was not liable; Lord Eldon saying, that "to allow such a demand would be to put it in the power of servants and tradesmen to ruin the master."

*Pearce v.
Rogers.*

Again, where (t) a butler ordered brandy in his master's name, and the brandy was consumed by the butler and cook, without the master being privy to the order, delivery or consumption, the master was held not liable to pay for it.

*Maunder v.
Conyers.*

And where (u) a lady ordered of a tailor two suits of livery a year for her coachman, and the tailor supplied one; but, at the desire of the coachman, supplied plain clothes instead of the other, it was held that the lady was only liable to pay for the livery actually supplied, and was entitled to set off against a subsequent account for clothes the price of a suit of livery which had been supplied and paid for, but taken back by the tailor from the coachman.

*Hunter v.
Countess of
Berkeley.*

Upon similar principles where (v) a servant, having injured his master's chaise by careless driving, left it with a coachmaker to be repaired without acquainting his master, and without any orders from him, and it appeared that he had never employed the coachmaker, who refused to deliver up the chaise without payment of his bill for the repairs. The master having brought an action for the chaise, recovered; as it was held that the

*Hiscox v.
Greenwood.*

(s) *Pearce v. Rogers*, 3 Esp. 214.

(t) *Maunder v. Conyers*, 2 Stark. 281.

(u) *Hunter v. Countess Dowager of Berkeley*, 7 C. & P. 413.

(v) *Hiscox v. Greenwood*, 4 Esp. 174.

coachmaker, not having inquired of the master whether the order for repairs was given by his authority, had no claim against him for the amount of his bill.

Trustees under
inspectorship
deed not liable
for goods
ordered by
trader.

And of course if the person ordering the goods was not the defendant's servant, the defendant would not be liable, as where a debtor carrying on trade under an inspectorship deed, ordered goods for the purpose, it was held that the trustees under the deed were not liable to pay for them as he was not their servant (*g*).

Servant left in
charge of
children.

So, if a servant be left in charge of children with a sufficient allowance for their support, he has no power to pledge his master's credit for necessaries or goods supplied for the support of the children (*z*).

Implied
authority of
farm bailiff.

The bailiff of a large farming establishment, through whose hands all payments and receipts take place, has no implied authority to pledge the credit of his employer by drawing and endorsing bills in his name (*a*). Nor has the resident agent (*b*) of a mining company, or a co-adventurer (*c*), an implied authority to borrow money upon the credit of the shareholders. Nor has the manager of a discount company authority to purchase shares (*d*). Nor has the secretary of a company authority to make representations to induce people to buy shares in it (*e*).

Mining agent.

And the secretary of a company who has authority only to accept bills drawn by A. on the company, cannot bind the directors by accepting bills drawn by B. (*f*).

(*g*) *Easterbrook v. Barker*, L. R., 6 C. P. 1, following *Redpath v. Wigg*, L. R., 1 Ex. 335.

(*z*) *Atkyns v. Pearce*, 26 L. J., C. P. 252.

(*a*) *Davieson v. Stanley*, 2 M. & G. 721; see *Waters v. Beagden*, 1 Y. & J. 157.

(*b*) *Hautyque v. Bourne*, 7 M. & W. 595. See *Re Cunningham & Co., Simpson's claim*, 36 Ch. D. 532 (promissory note given by the manager of a company).

(*c*) *Ricketts v. Bennett*, 4 C. B. 686.

(*d*) *Cartmell's case*, L. R., 9 Ch. 691; 43 L. J., Ch. 588.

(*e*) *Newlands v. National Employers' Accident Association*, 54 L. J., Q. B. 428. In *Barnett v. South London Tramways Co.*, 18 Q. B. 40, 815, Lord Esher, M. R., said that the secretary to a company is a mere servant, who has to do what he is told, and no person can assume that he has any authority to represent anything at all.

(*f*) *Nield v. Torton*, 4 Bing. 149. Where a traveller took a bill in his own name and absconded, it was held not to be payment to his employer, *Hogarth v. Wheeler*, L. R., 10 C. P. 630.

Nor has the country agent of an insurance company authority to receive payment of premiums after the usual fifteen days' grace (*g*). Nor has the agent of an insurance company power to bind the company by issuing policies contrary to the deed of settlement (*h*).

Agent of
insurance
company.

Nor has the secretary of an intended railway company implied authority, *as such*, to bind individual members of the provisional or managing committee upon contracts, even for articles necessary for carrying on the business of the company. In order to fix them with liability to pay for goods, work or labour, &c., ordered by the secretary, it is necessary to connect the party sought to be charged with the order, either by showing his previous consent or subsequent recognition of it (*i*). The same principle applies to *letters* written by such secretary. They are only binding upon the board of directors, or such members of it as authorized the secretary to write them (*j*). Therefore, where (*k*) an engineer brought an action against a provisional committeeman of a railway company for work and labour in surveying the intended line of railway, and the only evidence to charge the defendant was a letter written by the secretary, but there was no evidence to connect the defendant with the letter, the plaintiff was nonsuited.

Secretary of
intended
railway
company.

*Rennie v.
Wynn.*

Upon similar principles it has been held in America in a case (*l*) in which the cashier of a bank wrote to the secretary of the treasury saying that the bearer was

Cashier of
bank.

(*g*) *Acey v. Fernie*, 7 M. & W. 151.

(*h*) *Hamburgh v. Hull and London Fire Insurance Co.*, 3 H. & N. 789.

(*i*) *Barnett v. Lambert*, 15 M. & W. 489; *Reynell v. Lewis*, 15 M. & W. 517; *Cooke v. Tonkin*, 9 Q. B. 936; *Barker v. Stead*, 3 C. B. 946; *Williams v. Pigott*, 2 Exc. 201; *Bailey v. Macanlay*, 13 Q. B. 815; *Burbridge v. Morris*, 34 L. J., Exc. 131.

(*j*) *Burnside v. Dayrell*, 3 Exc. 224; *Todd v. Emly*, 7 M. & W. 429.

(*k*) *Rennie v. Wynn*, 4 Exc. 691.

(*l*) *United States v. City Bank of Columbus*, 21 How. 356. But the cashier of a bank has authority to judge of genuineness of orders for payment of money, and to pay them: *R. v. Prince*, L. R., 1 C. C. R. 150. Therefore obtaining cash from him by a forged order is obtaining money by false pretences, and not larceny, *ibid.* See *R. v. Middleton*, L. R., 2 C. C. R. 38, where a clerk in the post-office, by mistake, handed to the prisoner *8l. 16s. 10d.* (on his presenting an order for 10s.), and he took the money *animo furandi*, and was held rightly convicted of larceny.

authorized to contract for the transfer of money from New York to New Orleans, and such a transaction was not within the scope of the powers of the cashier, nor authorized by the directors, that the bank was not bound to reimburse the money which the secretary of the treasury advanced. And in another case (*m*) it was held that a release given by the president and cashier of a bank to the indorser of a promissory note of his liability upon it, did not bind the bank: neither one nor both having authority to make contracts of that kind.

Credit given to servant, with knowledge that he was his master's agent, and who his master was.

Nor can a master be rendered liable upon a contract made by his servant, if at the time the contract is entered into, the party with whom it is made knows not only that the servant is only an agent, but also who his master or principal is (*n*): and notwithstanding that knowledge choose to *make the servant his debtor*, dealing with him and him alone. In that case the party cannot, on the failure of the servant to perform the contract, turn round and charge his master, having once made his election (*o*) at the time when he had the power of choosing between the one and the other (*p*).

Termination of implied authority by notice.

And a master who has been in the habit of paying for goods ordered by his servant, and has thus impliedly given him authority to pledge his credit, may, by *giving notice* to the tradesman who has supplied the goods on those terms, *revoke or terminate the servant's authority* to pledge his master's credit, provided such notice is given before the authority is acted on (*q*).

Notice to tradesman's servant not sufficient.

Where (*r*), however, the defendant had been in the

[*m*] *Bank of United States v. Dunn*, 6 Peters, 51.

[*n*] If the party know the servant to be merely an agent, but do not know who his principal is, and debit the servant; he may, in that case, charge the principal when discovered; *Thomson v. Davenport*, 2 Smith, L. C.; 9 B. & C. 78; *Thomas v. Edwards*, 2 M. & W. 215.

[*o*] As to what amounts to an election, and whether anything short of suing to judgment amounts to an election, see *Curtis v. Williamson*, L. R., 10 Q. B. 57; *Priestley v. Ferrer*, 3 H. & C. 977, and other cases, *ibid.* cit.

[*p*] See *per* Lord Tenterden in *Thomson v. Davenport*, 2 Smith, L. C., 9 B. & C. 86, and the converse case of *Ramazotti v. Barring*, 29 L. J., C. P. 39.

[*q*] *Chappell v. Reay*, 30 L. J., Ex. 24.

[*r*] *Girshod v. Freeman*, 3 Esp. 85.

habit of dealing with the plaintiff for beer on credit, but once, when he paid the bill, told the man who brought the beer that he would run up no more bills with the plaintiff, but would pay for the beer as it came in, and afterwards gave his servant money to pay for the beer, but the servant embezzled it, the defendant was held liable, as he did not show that the plaintiff himself had notice of this change in the mode of dealing; and Lord Eldon said, that unless he had, it must be taken that the plaintiff understood that the dealings between him and the defendant continued in the usual way.

And it is clear that mere notice to the servant himself, who had general authority to make contracts in his master's name would not exonerate the master from liability upon contracts made by the servant after his discharge (s).

Mere revocation of servant's authority insufficient.

Thus, in a case (t) where a servant had power to draw bills of exchange in his master's name, and afterwards was turned out of the service, Holt, C. J., said, "If he draw a bill in so little time after that the world cannot take notice of his being out of service, or if he were a long time out of his service, but that kept so secret that the world cannot take notice of it, the bill in those cases shall bind the master."

— v.
Harrison.

The case of *Monk v. Clayton* (u), "where the act of a servant, though out of place, bound his master by reason of the former credit given him by his master's service, the other not knowing that he was discharged," is one of a similar kind.

Monk v.
Clayton.

The master's death operates as a revocation of the servant's authority to pledge his credit; after that event,

Death of
master.

(s) *Trueman v. Loder*, 11 A. & E. 589; *Aste v. Montague*, 1 Fost. & F. 264. See *Tassell v. Cooper*, 9 C. B. 509, where the question arose whether a farm bailiff, who had orders to deal no more with his master's property, was justified in receiving money for wheat sold previously.

(t) — v. *Harrison*, 12 Mod. 346; and see *Newsome v. Coles*, 2 Camp. 617, where, after a dissolution of partnership, and notice of it published in the London Gazette, and sent round to all the customers of the firm, the retiring partners were held not liable to pay bills drawn or accepted by the remaining partner in the name of the old firm.

(u) Cited by the Court in *Nickson v. Brohan*, 10 Mod. 110.

therefore, the master's representatives would not be bound by the servant's contracts (*x*).

Lapse of time.

Lapse of time, also, would, it is conceived, in many cases raise a presumption that the servant's authority to pledge his master's credit was terminated (*y*).

IN CASES OF TORT—CRIMINALITER.

Master is not in general responsible, *criminaliter*, for the acts of his servant :

A master is not, generally speaking, criminally responsible for the acts of his servants, unless he expressly command or personally co-operate in them. In criminal cases they must each answer for their own acts, and stand or fall by their own behaviour (*z*). And where one employs another to do a thing, and there are several ways of doing it, one criminal and another innocent, and he does it in a criminal manner, the employer is not responsible (*a*).

except where he expressly orders an illegal act.

But where one man *expressly* orders another to do an illegal act, it is clear that the employer at least is accountable for that act (*b*). Whether or not the person employed is also criminally responsible must depend upon circumstances (*c*).

If, though the actual doer of the deed be a servant, the master stands by and sees and assents to the committal of the offence by the servant or chooses to refrain from

[*x*] *Blades v. Erve*, 9 B. & C. 167 ; but see Brett, L. J., in *Deeu v. Nunn*, 1 Q. B. Div. 661, in which the defendant was held liable to pay for goods ordered by his wife and supplied by the plaintiff during the defendant's temporary insanity. As to the liability of the servant who has ordered the goods, see *Smart v. Illery*, 10 M. & W. 1, and other cases cited Chap. VI.

[*y*] ——— v. *Harrison*, 12 Mod. 316.

[*z*] *R. v. Huggins*, 2 Str. 882 ; Paley on Ag. 303 ; Story on Ag. s. 452. So a sheriff is not liable *criminaliter*, though he is *civiliter*, for the act of his bailiff : *Lodgecock's case*, Latch. 187 ; *Sanderson v. Baker*, 3 Wils. 310, 316 ; *Woodgate v. Knatchbull*, 2 T. R. 148 ; *Bagge v. Whitehead*, (1892) 2 Q. B. 355.

[*a*] *Ponchey v. Rowland*, 13 C. B. 482 ; and *per* Lord Wensleydale in *Couper v. Stubb*, *post*, p. 271.

[*b*] *Fost.* 125, *Roberts v. Woodward*, 25 Q. B. D. 412. Upon this principle it was held that the conviction of a servant for using water, unappealed against, was evidence against his master that he had no right to use it so : *Katon v. Swansea Waterworks*, 17 Q. B. 267.

[*c*] As to the criminal liability of a servant for acts done at the command of his master, see Chap. VI. In *R. v. Woodburn and Coke*, 17 How. St. Tr. 54, W., a hired labourer, and C., his master, were tried, condemned, and executed under the Coventry Act (22 & 23 Car. 2, c. 1) for hitting a man's nose.

exercising the authority which he might have exercised to prevent the offence being committed, the master would be criminally liable; as (*d*) where the manager of a coal mine was held responsible for a breach by his servant, a banksman, of a statutory rule in lowering more than eight people at once, the master standing by and not forbidding it. So, too, a master was held liable for knowingly suffering prostitutes to meet and remain in his house contrary to 2 & 3 Vict. c. 47, s. 44, if he intended his servant, who was the actual offender, to do the act which amounted to a misdemeanour by managing the house in the way complained of (*e*); though the mere fact of the relation of master and servant existing between them would not have made him liable.

If a man employs an innocent agent (*f*) for the purpose of committing any crime, the employer is the principal offender, and liable to be indicted and punished as such, although he be absent when the crime is actually committed. This principle is constantly acted upon in the administration of criminal law. But it may be convenient to mention a few cases illustrative of it.

The prisoner, who was a wet nurse in a family, and had put her own child out to nurse, gave S., the person in charge of it, a bottle of laudanum, with directions to give it to the child, saying it was medicine and would do the child good; but S. said the child was well and did not want medicine, and put the bottle on the mantelpiece without opening it. A few days afterwards, whilst S. was out, one of her children got hold of the bottle and gave some to the child, who died in consequence: it was held by the judges that the administering the poison by

Employer of
an innocent
agent is
principal
though
absent.

Murder.
R. v. Michael.

(*d*) *Howells v. Wignac*, 32 L. J., M. C. 241.

(*e*) *Wilson v. Stewart*, 32 L. J., M. C. 198.

(*f*) An agent, or servant, concurring in a crime for the purpose of aiding in the detection of his employer, is looked upon as an innocent agent: *R. v. Bauman*, 1 C. & K. 295. The distinction between an innocent and a guilty agent is now practically unimportant in punishing the principal, since an accessory before the fact may now be indicted, tried, convicted and punished in all respects as if he were a principal: 24 & 25 Vict. c. 94, s. 1; and see sect. 6.

R. v. Michael. S.'s child was, under the circumstances, as much in point of law an administering by the prisoner as if she had actually administered it with her own hand. They, therefore, held that she was rightly convicted of murder (*g*).

Forgery.
R. v. Giles. So, where the prisoner (*h*) gave a forged note to a boy (who did not know that it was forged), and directed him to pay it away at N.'s shop for goods. The boy did so, paid the note to N., and brought back the goods and change to the prisoner. This was held by the twelve judges to be an uttering of the forged note by the prisoner to N.

Receiving stolen goods.
R. v. Parr. Again, where two dock porters stole a quantity of molasses, and by direction of H., a dealer in that article, took it to his warehouse and left it with M., who was H.'s servant, and who knew it to be stolen: it was held that both the dealer and his servant might be convicted of receiving stolen goods, although the dealer was absent at the time the molasses was left at his warehouse, but it was clear that shortly after he came home he was aware of the molasses having been left, and there was strong ground for supposing that he then knew that it had been stolen (*i*).

obtaining money by false pretences.
R. v. Butcher. So, in a case (*k*) where B. was one of many persons employed by a company, whose wages were paid weekly at a pay-table by the treasurer of the company. On one occasion when B.'s wages were due, the prisoner promised a boy a penny if he would go and get B.'s money. The boy innocently went to the pay-table, and said to the treasurer, "I am come for B.'s money," and B.'s wages were given him. He took the money to the prisoner,

g *R. v. Michael*, 9 C. & P. 356. And see *R. v. Wilson*, 26 L. J., M. C. 18, causing poison to be taken with intent to procure abortion.

h *R. v. Giles*, 1 Mood. C. C. 166; and see *R. v. Palmer*, 2 Leach, 978; *R. v. Brown*, 4 East, 164; *R. v. Mazeau*, 9 C. & P. 676; *R. v. Clifford*, 2 C. & K. 202. And see 24 & 25 Vict. c. 98, s. 45 (forgery), as to criminal possession of any matter which is in actual custody of another; also 24 & 25 Vict. c. 99, s. 1 (coinage offences).

i *R. v. Parr*, 2 Mood. & Rob. 346.

k *R. v. Butcher*, 28 L. J., M. C. 14; 1 Bell, Cr. C. 6.

who was waiting outside, and who gave the boy the penny : it was held that the prisoner might have been convicted on a count charging him with obtaining B.'s money from the treasurer by falsely pretending to the treasurer (as he did by means of the boy) that the boy had authority from B. to receive his wages.

Upon similar principles, a person who employed another to harbour poachers, who were indicted for maliciously shooting at a keeper, was convicted as an accessory after the fact, though he himself did no act of relieving them (*l*).

Accessory
after the fact,
by an agent.
R. v. Jarvis.

Again, where (*m*) the lessee of a coal-mine had, from the shaft opened to work it, carried on extensive workings of coal, and by means of these workings had gotten coal belonging to about forty different proprietors, without their sanction or knowledge, and had thus unlawfully possessed himself of 10,000*l.* worth of the coal of other persons (the evidence extended to the getting of coal continuously during a period of upwards of four years, and to operations conducted by different underlookers and by many different workmen) ; but it did not appear that the lessee had himself personally touched or removed any of the coal ; he was nevertheless convicted of stealing it (*n*) : Erle, J., observing, "The prisoner did not by his own hand pick or remove the coal ; but if a man does, by means of an innocent agent, an act which amounts to a felony, the employer and not the innocent agent is the person accountable for that act."

Stealing coal
by hands of
servants.

R. v. Bleasdale.

But where a master was engaged in making fireworks illegally (*i. e.*, contrary to a now-repealed statute 9 & 10 Will. 3, c. 7, s. 1), some of which, in his absence, by an intervening negligent act of his servant, exploded, and a rocket flew across the street, set fire to a house, and burnt one of the inmates to death : it was held that the

Master not
responsible
where
another's
negligence
added to his
caused death.

(*l*) *R. v. Jarvis*, 2 Mood. & Rob. 40.

(*m*) *R. v. Bleasdale*, 2 C. & K. 765.

(*n*) Under 7 & 8 Geo. 4, c. 29, s. 37, since repealed. A mine owner who has reason to suspect this may obtain an order for an inspection from the Court of Chancery : *Bennett v. Whitehouse*, 29 L. J., Ch. 326.

master could not be convicted of manslaughter, as it was the superadded negligence of some one else that caused the death (*o*).

Exceptions in cases of implied orders of master.

There are, moreover, many cases in which the act of the servant, having been within the usual scope of his employment, has been considered to have been done by the *implied* command of the master, and *he* has been held criminally responsible for it, although he may, in the particular instance, have been perfectly ignorant of the doing it. Thus, in cases of libel (*p*), previously to the statute 6 & 7 Vict. c. 96, the publishers and proprietors of newspapers and other publications were frequently held liable to criminal informations for libels published by their servants in the usual course of their employment, although such publishers and proprietors personally had nothing to do with the publication of the libels (*q*).

Cases of libel.

6 & 7 Vict.
c. 96, s. 7.

To remedy this state of the law, the statute 6 & 7 Vict. c. 96 provided—

Sect. 7. That whosoever upon the trial of any indictment or information for the publication of a libel under the plea of not guilty evidence shall have been given which shall establish a presumptive case of publication against the defendant by the act of any other person by his authority, it shall be competent to such defendant to prove that such publication was made without his authority, consent, or knowledge, and that the said publication did not arise from want of due care or caution on his part.

R. v. Holbrook.

Since the passing of this statute, it has been held that the general authority given to an editor of a newspaper to use his discretion in the insertion of articles, is not of itself sufficient to make proprietors criminally responsible for libellous articles inserted by the editor without

(*o*) *R. v. Bennett*, 28 L. J., M. C. 27; 1 Bell, Cr. C. 1.

(*p*) As to the liability of a man to indictment for a libel which he caused to be published, see *R. v. Cooper*, 8 Q. B. 533; *Parkes v. Prescott*, L. R., 4 Ex. 169.

(*q*) *R. v. Almon*, 5 Burr. 2686; *R. v. Walter*, 3 Esp. 21; *R. v. Gutch*, M. & M. 433, 438; see May's Const. Hist. vol. 2, 107. As to the liability of the editor to indemnify the proprietor when fined for the publication of a libel, see *Colburn v. Patmore*, 1 Cr., M. & R. 73.

their knowledge, and without any specific authority or consent from them (*r*).

Again, in the following case, a man was held liable to an action for penalties, through the act of one who was considered his agent (*s*).

Action for penalties.

An election was about to take place at C. ; S. was one of the candidates, and in his committee-room the question was discussed whether paying the expenses of bringing up out-voters was legal. S., after referring to a law-book, said it was, but limited it to the payment of expenses out of pocket. A circular had been previously prepared and printed, requesting out-voters to come up and vote for S. Upon S. making this declaration of his opinion, a clerk to an agent of S. (without any express direction from S. or from the agent) wrote at the bottom of each circular, "your railway expenses will be paid." A voter who resided at H. received one of the circulars with this added note ; he came to C. and voted for S., and afterwards received 8s., the expenses to which he had *bonâ fide* been put by his journey. It was held by the House of Lords, that the words added to the circular must be treated as written by authority of S., and that he was, therefore, liable to the penalties attached to bribery under the Corrupt Practices Prevention Act, 1854 (*t*). In giving judgment, Lord Wensleydale said :—

Cooper v. Slade.

"I take the law to be clear, that a man cannot be guilty by his agent of an illegal act and be held responsible for that act, unless he has given the agent authority, express or implied, to do that illegal act. I know that the law of agency in such cases has been much extended by committees of the House of Commons, but I take it to be a clear proposition of law, that if a man employs an agent for a perfectly legal purpose, and that agent does an illegal act, that act does not affect the principal unless a great deal more is shown : unless it is shown that the principal directed the agent so to act, or really meant he should so act or afterwards ratified the illegal act, or that he appointed one to be his agent to do both legal and illegal acts, to do everything in short which he might think proper

(*r*) *R. v. Holbrook*, 3 Q. B. Div. 60 ; and *S. C.* after second trial, 4 Q. B. D. 42.

(*s*) *Cooper v. Slade*, 6 Ho. Lords Cas. 746.

(*t*) 17 & 18 Vict. c. 102. See now 46 & 47 Vict. c. 51, s. 7, and sects. 17, 21, and 22, as to illegal employment at elections.

to support the interests of the candidate. If the candidate gives his agent such a general authority, and the agent is guilty of bribery, the candidate is no doubt responsible for it. I know that there is a very great difference in parliamentary practice upon this subject, but I conceive that the rule of law is as I have laid it down, that *no man who is an agent for a legal purpose can make the principal responsible for an illegal act, unless the principal has in some way, directly or indirectly, authorized it, as I have explained.*"

Informations
for penalties

So, also, masters have been frequently held liable to *informations for penalties* incurred by the breach of some statutory regulations by persons in their employ, although the masters themselves may have been perfectly ignorant that in the particular instance any breach of the law has been committed. These informations, it is true, do, in strictness, partake more of the nature of civil proceedings to recover that which is a debt to the Crown, than of a criminal proceeding (*u*), but still they are *penal* proceedings, and it is conceived, therefore, that they may be properly mentioned in this place. Perhaps the most familiar instances of the master's liability to this kind of proceedings are to be found in cases of informations for breach of the revenue laws, in which cases, if a master were not held responsible for the acts of his servants, the revenue laws might, as was once (*v*) observed by Pollock,

(*u*) See *per* Bayley, B., in *Attorney-General v. Seldon*, 1 Cr. & J. 226; and see *Atcheson v. Everitt*, Cowp. 391, that penal actions are civil suits; and *Attorney-General v. Bowman*, 2 B. & P. 352, that witnesses to character are not admissible. Previous to 17 & 18 Vict. c. 122, s. 15, which is now repealed, it was doubted whether the defendant, in informations for penalties, was admissible as a witness under 14 & 15 Vict. c. 99: *Attorney-General v. Radloff*, 10 Ex. 84. He was not admissible in informations under the Game Act: *Cutell v. Iveson*, 27 L. J., M. C. 167; nor under the Beer Act: *Parker v. Green*, 2 B. & S. 299; see *Legg v. Pardoe*, 9 C. B., N. S. 289; see also *Attorney-General v. Le Marchant*, 2 T. R. 201; *Town v. Leaper*, 1 M. & G. 752, where Bosanquet, J., says, "It has been decided to be an offence to compromise a penal action which had not actually been brought." By the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), sect. 259, the defendant in any revenue proceedings in the High Court is competent and compellable to give evidence.

(*v*) *Attorney-General v. Allen*, Ex. Mich. Term, 1850. This criminal liability of a master for the acts of his servant in violating the revenue laws, received a forcible illustration in the informations (understood to amount to 120 or upwards, filed against the London Dock Company and the St. Katherine's Dock Company; the alleged severity of which proceeding produced a large meeting of influential merchants, &c., in the City of London, in December, 1851, at which a series of articles (as they were termed) were agreed upon, as the foundation of a proposed alteration in the law of customs. One of these

C. B., "he evaded with the utmost facility and impunity, and they would be reduced to a mere dead letter" (*w*).

In an old case in *Dyer* (*x*), it appeared that the deputy of a customer in a creek of a port (in which case a deputy was to be made by the statute of the first year of Q. Eliz. c. 12 [c. 11, s. 8]), falsely concealed the custom of a merchant, and the customer himself, ignorant of this, certified by his oath the customs of the port into the Exchequer, according to the false information of his deputy, and judgment was given for the Queen against the customer, who was held liable for the forfeiture of the treble value of the merchandize so customed, and to be fined and ransomed according to the statute 3 Hen. 6, c. 3. And in *Lane v. Cotton* (*y*), Holt, C. J., after citing the above case in *Dyer*, said, "And what is the reason thereof, but because the principal shall answer for his deputy."

Again, where (*z*) an excise officer discovered on the defendant's premises a quantity of tobacco, for which he requested to see the permit, and the defendant's servant said he had one, when in fact there was none, and ultimately produced a permit for the removal of different tobacco, and dated after the discovery by the officer, the defendant was held liable to an information for penalties

articles, 7, was as follows: "Merchants, shipowners, and others, should not be made responsible for the crimes or offences of their servants or crews, except where guilty knowledge, or the most culpable negligence, is clearly traced home to them." In December, 1852, a deputation from the Committee of London Merchants for Reform of Board of Customs waited on Lord Derby (then Prime Minister), with a memorial containing a series of resolutions, one of which (No. 10) was the same as article 7, above mentioned. And in the following year, by the Customs Consolidation Act, 1853, 16 & 17 Vict. c. 107, s. 213, power was given to the Commissioners of Customs to waive the forfeiture of ships or boats having prohibited goods on board, if satisfied that they were on board without the knowledge or privity of the owner or master of such ship or boat, and without any wilful neglect, or want of reasonable care, on their parts. See now 39 & 40 Vict. c. 36, s. 209.

(*w*) By 53 & 54 Vict. c. 21, s. 11, if any person by himself or any person in his employ obstructs, molests, or hinders an officer of Inland Revenue in the execution of his duty, or any person acting in the aid of such officer, he shall incur a fine of 100*l*.

(*x*) *Anon.*, *Dyer*, 238 *b*.

(*y*) 12 Mod. 489.

(*z*) *Attorney-General v. Siddon*, 1 Cr. & J. 220; *Attorney-General v. Riddle*, 2 Cr. & J. 493.

*Attorney-
General v
Siddons.*

for harbouring and concealing tobacco without paying duty, although at the time of the discovery he was from home, and had been absent for some time previously. In giving judgment, Bayley, B., said:—

"This is a case in which, to my mind, the act of the servant is to be considered as being an act done in the master's business, and within the scope of the authority probably given by the master to the servant.

"This is not the ordinary case of a servant selling in his master's shop the articles in which the master deals, in which it is quite clear that he is acting within the ordinary scope of the authority which he has received from his master, and therefore that the act of the servant in making the sale is the master's act: upon which principle all the cases of libel have gone (*a*).

"Neither is this the case of an act done by a servant in the manufacture of articles which the master is himself to manufacture. There the servant is merely acting in the business of the master, and within the scope of the authority which he actually receives from his master. The authority which he receives from his master is an authority to make and manufacture, and the master is responsible for his conduct, *primâ facie*, as to the means he adopts in making and manufacturing.

"But this is a case certainly of a different description, and I agree with the distinction that was taken when it was argued, that this does not fall within the ordinary range of the cases of a servant's act being the master's act. But in order to form a judgment whether this is the master's act or not, and within the scope of the authority which ought to be considered as given by the master to the servant, you must look at the nature of the act, and see with what view that act was done, and the participation which the master had in anything to which that act referred.

"This is the case of a servant of a fraudulent master endeavouring by his own act to conceal his master's fraud, and to prevent the consequences which would otherwise fall upon the master in respect of that fraud. From the nature of the service in which the party is employed, and from the conduct of the master in his fraud, you may infer whether or no the servant had *primâ facie* an authority from the master; not perhaps specifically for the doing of this specific act, but for the purpose of doing that which, in the exercise of his discretion upon a moment of embarrassment, which the possession of an improper article might naturally create, the servant should think and deem to be best."

The learned baron then went through the facts of the case, which, in his opinion, formed *primâ facie* evidence to show that the act of the servant was the act of the master. though, said he, "The master was certainly at liberty to have produced evidence for the purpose of

(a) *R. v. Almon*, 5 Burr. 2686; *R. v. Gutch*, M. & M. 433, *ante*, p. 270.

rebutting that *prima facie* case, but in the absence of any evidence to rebut that case, it was rightly left to the jury, and *the jury were bound to consider it as being the master's act.*"

There is a general presumption that *mens rea*, an evil intention, or a knowledge of the wrongfulness of the act, or some blameworthy condition of mind, is an essential ingredient in every offence (*b*). *Mens rea* not always necessary.

The principal class of exceptions from this rule is that which consists of cases where, in the public interest, penalties have been imposed by statute upon the doing of certain acts. To what extent a criminal liability is imposed upon a master for the acts of a servant done without the express authority of the master depends of course upon the language used in the statute which defines the offence:

Under the Licensing Act, 1872 (35 & 36 Vict. c. 94), it was held that a licensed victualler was liable to be convicted under sect. 16 for supplying liquor to a constable on duty, though this was done by his servant without his knowledge (*c*); and under sect. 13, by which the sale of intoxicating liquor to a drunken person is an offence, a licensed victualler was held liable (*d*) for the act of his servant, though the servant had acted contrary to express orders in selling to a drunken person, the act being one within the scope of the servant's employment. But the committee of a club was held (*e*) not to be liable for selling intoxicating liquors without a licence in a case where the steward of the club, whose orders were to sell only to members of the club, contrary to his orders sold to persons who were not members. Licensing Act, 1872.

Sect. 17 of the Licensing Act, 1872, also imposes a penalty upon any person licensed under the Act who "suffers any gaming" to be carried on on his premises.

(*b*) *Sherras v. De Rutzen*, (1895) 1 Q. B. 918; *Coppen v. Moore*, (1898) 2 Q. B. 306; *Chisholm v. Doulton*, 22 Q. B. Div. 736.

(*c*) *Mullins v. Collins*, L. R., 9 Q. B. 292.

(*d*) *Commissioners of Police v. Cartman*, (1896) 1 Q. B. 655.

(*e*) *Newman v. Jones*, 17 Q. B. D. 132.

To make a licensed person liable under this section, if neither personal knowledge on his part (*f*) or connivance (*g*) is shown it will be sufficient if the gaming had been allowed by the servant whom the master had left in charge of the premises (*h*), so that the servant's permission of the gaming had been an act done in the course of his employment, even though contrary to his master's express orders.

Other Acts.

The Merchant Shipping Act, 1876 (39 & 40 Vict. c. 80), imposed by sect. 28 a penalty on any owner of a British ship who should "allow" the ship to be overloaded. It was held (*i*) that an owner of a ship which without his knowledge was overloaded by the master was not liable to a penalty. Under other Acts also masters have been held criminally responsible for the acts done by their servants in the course of their employment, although contrary to express orders; as under the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28) (*j*); and under the Slaughter Houses Metropolis Act, 1874 (37 & 38 Vict. c. 67) (*k*). And an innocent vendor of milk is liable to a penalty under sect. 6 of the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), for the unauthorized act of his servant in adulterating it (*l*); though under other

(*f*) *Somerset v. Wade*, (1894) 1 Q. B. 574.

(*g*) *Bosley v. Davies*, 1 Q. B. D. 84.

(*h*) *Redgate v. Haynes*, 1 Q. B. D. 89; *Bond v. Evans*, 21 Q. B. D. 249. So in *Somerset v. Hart*, 12 Q. B. D. 360, knowledge of a potman who was not put in charge of the premises was held to be not sufficient.

(*i*) *Massey v. Morris*, (1891) 2 Q. B. 412. The Merchant Shipping Act, 1876, was repealed by the Merchant Shipping Act, 1894. In *Hardeastle v. Buelby*, 4892 1 Q. B. 709, a question arose under sect. 56 of the Highways Act (5 & 6 Will. 4, c. 50) which imposes a penalty on a surveyor who "allows" a heap of stone to remain on a highway at night to the danger of persons passing thereon, whether or not knowledge on the part of the surveyor was necessary to constitute the offence, or whether negligence would be sufficient.

(*j*) *Coppen v. Moore*, (1898) 2 Q. B. 306; see *Budd v. Lucas*, (1891) 1 Q. B. 408.

(*k*) *Callman v. Wells*, (1897) 1 Q. B. 396.

(*l*) *Reou v. Foot*, 65 L. T., N. S. 649; *Parker v. Alder*, (1899) 1 Q. B. 20. Evidence that the servant acted against the express orders of the master would be admissible, as this would tend to mitigate the penalty to be imposed on the master: *Kearley v. Tylor*, 65 L. T., N. S. 261; *Betts v. Armistead*, 20 Q. B. D. 771.

provisions of the Act guilty knowledge may be necessary to constitute an offence (*m*).

And where a statute (*n*) imposed a penalty on *every person* who should be concerned in the unshipping of any goods, the duties for which had not been paid, it was held (*o*) that *each partner* (*p*) of a firm, whose clerk had been guilty of a fraud by altering the blue book at the Custom-house (in which the amount of goods was entered for duty), was liable to the penalty incurred through the act of their clerk, as they *derived a benefit* from his fraud, and produced no evidence to rebut the *primâ facie* evidence of knowledge on their part which arose from that circumstance.

So, also, a guardian of the poor has been held liable to the penalties provided by 4 & 5 Will. 4, c. 76, s. 77 (which prohibits any person appointed to any office concerned in the administration of the poor-laws from supplying for his own profit any goods, &c., ordered to be given in parochial relief to any person), where his son and partner sold an iron bedstead delivered by the order of the relieving officer at the house of a pauper to whom it was lent by the guardians, without any guilty knowledge on the part of the guardian, the bedstead having been supplied by his partner with knowledge of the circumstances in the ordinary course of the partnership business (*q*).

Where under a local Act a penalty was imposed for a breach of a regulation that every engine running on a tramway at night should carry a lighted lamp in front, a tramway company was held responsible for the personal neglect of their engine driver in driving an engine at night without seeing that the lamp in front of his engine was lighted (*r*).

(*m*) *Derbyshire v. Houlston*, (1897) 1 Q. B. 772.

(*n*) 3 & 4 Will. 4, c. 53, s. 44.

(*o*) *R. v. Dean*, 12 M. & W. 39.

(*p*) It would have been otherwise had the penalty been attached to each offence, and not to each party concerned: *ibid.*; and see *R. v. Clerk*, Cowp. 610.

(*q*) *Davies v. Harvey*, L. R., 9 Q. B. 433.

(*r*) *St. Helens District Tramways Co. v. Wood*, 60 L. J., M. C. 141.

Negligence
of Master.

The Smoke Nuisance (Metropolis) Act, 1853 (16 & 17 Vict. c. 128), imposed a penalty by sect. 1 on any person who should "negligently" use a furnace so that the smoke arising therefrom should not be effectually consumed. Under this enactment it was held (*s*) that a master who was not guilty of any personal negligence was not responsible for the negligence of his servant. The use in a penal statute of this sort of the word "neglect" or "default" implies the necessity of some personal neglect or default on the part of the person accused (*t*).

And an employer has been held liable to penalties for breach of the Truck Act, 1831, by his bookkeeper paying wages otherwise than in current coin of the realm (*u*).

Pawnbrokers'
servants.

By the Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93), penalties are imposed on pawnbrokers in certain cases, and it is enacted—

Sect. 8. For the purposes of this Act, anything done or omitted by the servant, apprentice, or agent of a pawnbroker in the course of, or in relation to the business of the pawnbroker, shall be deemed to be done or omitted (as the case may be) by the pawnbroker; and anything by this Act authorized to be done by a pawnbroker may be done by his servant, apprentice, or agent.

Master not
liable to
penalties for
acts of
servant
beyond scope
of his
authority.

*Harrison v.
Leaper.*

A master, however, could not be thus rendered liable to penalties for any act of his servant, beyond the scope of his authority (*r*).

And where a servant in charge of a steam threshing-machine let on hire to his master, erected it within twenty-five yards from a carriage-way, but there was no evidence that the master ordered it to be so erected, it was held, by the Court of Queen's Bench, that the master could not be convicted under the Highway Act, 5 & 6 Will. 4, c. 50, s. 70, which imposes a penalty upon any

(*s*) *Chisholm v. Doulton*, 22 Q. B. D., 736. The Smoke Nuisance (Metropolis) Act, 1853, was repealed by the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), and sects. 23 and 24 of that Act contain provisions for smoke consumption.

(*t*) *Duckenson v. Fletcher*, 1 L. R., 9 C. P. 1.

(*u*) *Smith v. Walton*, 3 C. P. D. 109.

(*r*) *Olding v. Smith*, 16 Jur. 497; *R. v. Gidney*, 4 Ct. Sess. Cas. (Third Ser.) 656 (retailing beer without a licence).

person who shall erect or cause to be erected any steam-engine, &c., within the distance of twenty-five yards from any carriageway (x).

Another class of cases which forms an exception to the general rule that a *mens rea* is essential to the commission of an offence, is that in which masters have been held liable for public nuisances (y), such as carrying on offensive trades, committed by their servants, although they themselves have nothing to do *personally* with the nuisance complained of. In such cases, also, if a master could shield himself from criminal responsibility on the ground that he personally had nothing to do with the carrying on the trade, the real offender might escape with impunity, and the public grievance remain unredressed. It has indeed scarcely ever been contended that the master, in such cases, was not guilty on the ground that the nuisance was perpetrated through the agency of others (z); and where that objection has been taken, it has been speedily overruled.

Indictments
for nuisances.

Thus, in *Rex v. Medley* (a), the chairman, deputy chairman and other directors of a gas company, and several persons employed by them in carrying on the works, were jointly indicted for a nuisance occasioned by conveying the refuse of the gas, &c., into the river Thames, whereby fish were destroyed, and the water rendered unfit to drink. On the part of the defendants it was contended that the directors of the company were

R. v. Medley.

(x) *Harrison v. Leaper*, 5 L. T. Rep., N. S. 640. See *Hearne v. Garton*, 2 E. & E. 66.

(y) In *Turberville v. Stampe*, 1 Lord Raym. 264, Holt, C. J., said, "If my servant throws dirt in the highway, I am indictable." See 1 Bl. Comm. 431; 2 Noy's Maxims, c. 44; *Hall's case*, 1 Mod. 76; *R. v. Cross*, 3 Camp. 224; *Reedie v. London and North Western Railway Co.*, 4 Exc. 244.

(z) *R. v. Peddy*, 1 A. & E. 822, where a landlord was held liable to be indicted for a nuisance committed by his tenants, such nuisance being the inevitable result of the occupation, and the landlord receiving rent for that occupation. See, however, *Rich v. Basterfield*, 4 C. B. 783.

(a) 6 C. & P. 292. See also *R. v. Stephens*, L. R., 1 Q. B. 702, where a master was held liable to indictment for obstructing the river, although he specially ordered his servants not to do it; and *Michell v. Brown*, 1 E. & E. 267; *Searle v. Reynolds*, 7 B. & S. 704; and *Barnes v. Akroyd*, L. R., 7 Q. B. 474, where the owner of a factory was held responsible for black smoke issuing from a chimney in his factory.

not liable, as no criminal participation on their part, in the acts done by their workmen, was shown, and they did not even know what was done. But they were found guilty and fined, Lord Denman, C. J., saying it made no difference, that the directors were ignorant of what had been done, provided they gave authority to the manager to conduct the works. "It seems to me both common sense and law, that if persons for their own advantage employ servants to conduct works, they must be answerable for what is done by those servants."

*R. v. Great
North of
England Rail-
way Co.*

And again, where a railway company (*b*) was indicted for cutting through and obstructing a highway by works performed in a course not conformable to the powers conferred by the Act of Parliament; and one of the grounds on which it was argued that the company was not liable to an indictment for a misfeasance committed by their servants was that the individuals doing the act might be indicted and punished. Lord Denman said:—

"We are told that this remedy is not required because the individuals who concur in voting the order, or in executing the work, may be made answerable for it by criminal proceedings. Of this there is no doubt. But the public knows nothing of the former, and the latter, if they can be identified, are commonly persons of the lowest rank, wholly incompetent to make any reparation for the injury. There can be no effectual means for deterring from an oppressive exercise of power for the purpose of gain, except the remedy by indictment against those who truly commit it—that is, the corporation acting by its majority; and there is no principle which places them beyond the reach of the law for such proceedings."

*Innkeeper's
servant re-
fusing to
receive
guests.*

Upon similar principles it is conceived that an innkeeper might be rendered liable to an indictment for a refusal by his servant to receive a guest into the inn, if it were within the scope of the servant's employment to receive guests (*c*); or a tenant (whose landlord has

(*b*) *R. v. Great North of England Railway Co.*, 9 Q. B. 315. In *R. v. Pease*, 4 B. & Ad. 30, some of the members of a railway company were indicted together with their servants for a nuisance occasioned by the railway; and see *R. v. Scott*, 3 Q. B. 513; *R. v. Train*, 3 F. & F. 22.

(*c*) See *R. v. Irons*, 7 C. & P. 213, where the master refused to receive the guest. And as to that case, see *Fell v. Knight*, 8 M. & W. 269. The stat. 26 & 27 Vict. c. 41, which limits the liability of innkeepers in respect of

reserved the game) might be proceeded against under the Game Act (*d*) if he employed another person to kill game (*e*).

Since, however, this liability of masters to answer criminally for the illegal acts of their servants, might occasionally operate hardly upon masters by putting it in the power of wicked servants to subject their masters to penalties by their own *wilful* violation of the law, it is sometimes enacted, for the protection of masters, that servants *wilfully* transgressing the law, shall themselves be subject to a penalty, and their master, upon conviction of his servant, shall be exempt from further criminal liability (*f*).

When master exempt, on conviction of servant.

And where a master has been convicted in penalties for breach of the Bread Act, 1836 (*g*), through the wilful act, neglect, or default of any journeyman or other servant, and has paid the fines, it is provided (*h*) that such servant may be ordered to recompense his master for the money so paid.

Bread Act.

There is a similar provision in the Act for regulating Hackney Carriages in London (*i*), and in the Alkali, &c. Works Regulation Act, 1881 (*j*) ; but under the last-mentioned Act the servant may be convicted and fined.

Hackney Carriages Act.
Alkali Act, 1881.

But where an Act of Parliament (*k*), which imposed various penalties on maltsters who should violate the

Fraudulent conviction quashed.

the goods of their guests, contains an exception where such goods have been stolen, lost or injured through the wilful act, default or neglect of such innkeeper or any servant in his employ.

(*d*) 1 & 2 Will. 4, c. 32.

(*e*) See *Spicer v. Barnard*, 28 L. J., M. C. 176. which was the converse case; the tenant was held not liable for his servant killing rabbits, as he had a right to do so *himself*, and “*qui facit per alium, facit per se*.”

(*f*) As in the Margarine Act, 1887 (50 & 51 Vict. c. 29) s. 5; and in the Libel Act, 6 & 7 Vict. c. 96, s. 7, *ante*, p. 270.

(*g*) 6 & 7 Will. 4, c. 37.

(*h*) Sect. 13.

(*i*) 6 & 7 Vict. c. 86, s. 28.

(*j*) 44 & 45 Vict. c. 37, s. 25. So, too, the Metropolitan Fire Brigade Act, 1865, 28 & 29 Vict. c. 90, s. 23, which subjects the occupier of a house, any chimney of which is on fire, to a penalty of 20s., enables him to recover it from any person by whose neglect or wilful default it was caused.

(*k*) 7 & 8 Geo. 4, c. 52; repealed by 43 & 44 Vict. c. 22.

R. v. Gillyard. provisions of the Act, contained also a clause (*l*) for punishing, by summary proceedings before a magistrate, any workman, servant or labourer employed by or in the service of any maltster, who should, *maliciously* and with intent to injure such maltster, violate the provisions of the Act : with a proviso that the maltster himself should still continue liable to the penalties imposed for violation of the Act, unless he should forthwith prosecute such workman, &c. to conviction, and produce to the Commissioners of Excise a certificate of such conviction ; and a maltster *fraudulently* procured the conviction of his servant for an offence under the Act, with a view to protect himself from proceedings for the same offence, the Court of Queen's Bench granted a certiorari to remove, and quashed the conviction (*m*).

Master only liable where servant commits breach of a public duty binding on his master.

R. v. Watts.

And as the liability of a master to answer criminally for the acts of his servants presupposes, and is in fact founded upon, the violation of some *public* duty legally binding upon the master, it can, of course, only exist where such duty exists, and must cease when such duty ceases to be binding. And, therefore, where a vessel was sunk by accident in a navigable river, and without any default on the part of the owner or his servants, as the law does not ordinarily cast upon the owner of a vessel sunk under such circumstances the duty of using any precaution, by placing a buoy or otherwise, to prevent other vessels from striking against it, it was held that the owner was not liable to an indictment, or to an action at the suit of a party sustaining injury in consequence of a collision with the sunken vessel, for omitting to remove it or take precautions to prevent accidents (*n*).

(*l*, Sect. 46.

(*m*, *R. v. Gillyard*, 12 Q. B. 527.

(*n*, *R. v. Watts*, 2 Esp. 675 ; *Parnaby v. Lancaster Canal Co.*, 11 A. & E. 223 ; *Brown v. Mallett*, 5 C. B. 599 ; *Hanrck v. York, Newcastle, and Berwick Railway Co.*, 10 C. B. 348 ; *White v. Crisp*, 10 Exc. 312 ; *Metcalf v. Hetherington*, 11 Exc. 257 ; *Gibbs v. Liverpool Dock Trustees*, 1 H. & N. 439 ; 3 H. & N. 164. And see *R. v. Barrett*, 2 C. & K. 343, where it was held that an engineer could not be convicted of manslaughter, on an indictment which did not allege a duty in him which he had neglected to perform.

It may be convenient to mention in this place that whenever the appointment of special constables has been rendered necessary by the behaviour of labourers and others employed on railroads, canals and other public works, the expenses thereof may be thrown on the companies carrying on the works (o).

Expense of special constables to keep order among workmen thrown on companies carrying on works.

IN CASES OF TORT—CIVILITER.

A master is ordinarily liable to answer in a civil suit for the tortious or wrongful acts of his servant, if those acts are done in the course of his employment in his master's service (p), the maxims applicable to such cases being *Respondent superior* (q), and that before alluded to, *Qui facit per alium, facit per se*. This rule, with some

Master generally liable for torts of servant.

(o) 1 & 2 Vict. c. 80.

(p) It is indisputable that a liability by reason of a wrong or a tort can only be established by proving, either that the person charged himself committed the wrong, or that it was committed by his servants or his agents acting within the scope of their authority; Lord Herschell, L. C., in *Bainwell Manufacturing Co. v. Carl Schreiber & Furness*, (1893) A. C. 8. And neither the fact that the tort committed by the servant was also a criminal offence, nor the fact that the servant has been convicted for the offence, and is therefore under 24 & 25 Vict. c. 100, released from all further proceedings, civil or criminal, for the same cause, affords any defence to the master in an action by the injured person: *Dyer v. Munday*, (1895) 1 Q. B. 742. See also *per* Jervis, C. J., in *Dunkley v. Ferris*, 11 C. B. 457.

(q) "The maxim of *Respondent superior* is bottomed on this principle, that he who expects to derive advantage from an act which is done by another for him must answer for any injury which a third person may sustain from it. This maxim was first applied to public officers by the Stat. Westm. 2, c. 11, from the words of which statute it is taken, '*Si custos gaole non habeat per quod justicietur vel unde solvat, respondeat superior suis qui custodiam hujusmodi gaole sibi commisit.*' The terms of the Statute of Westm. 2, embrace only those who delegate the keeping of gaols to deputies, and were intended only, as Lord Coke tells us (2 Inst. 382), to apply to those who, having the custody of gaols of freehold or inheritance, commit the same to another that is not sufficient. The principle of the statute has, however, since been extended to sheriffs, who are responsible for their under-sheriffs and bailiffs, but has not been applied to any other public officer. Although the office of sheriff be now a burthensome one, yet they are entitled to poundage and other fees for acts done by their officers which in old time might be a just equivalent for their responsibility." *Per* Lord Wynford, in *Hall v. Smith*, 2 Bing. 160. A sheriff has frequently been held to be civilly liable for the acts and defaults of his officers: *Gregory v. Cotterell*, 5 E. & B. 571; *Boulton v. Reynolds*, 29 L. J., Q. B. 11; and "in like manner," under the County Courts Act, 1888, the high bailiff of a County Court is responsible for the acts and defaults of the bailiffs appointed to assist him: *Watson v. White*, (1896) 2 Q. B. 9; and for a person employed by one of his bailiffs: *Burton v. Le Gros*, 34 L. J., Q. B. 91.

Master's liability for torts of servant in course of his employment.

few exceptions, which will be hereafter pointed out, is of universal application, whether the act of the servant be one of omission or commission, whether negligent, fraudulent or deceitful, or even if it be an act of positive malfeasance or misconduct; *if it be done in the course of his employment*, his master is responsible for it *civilliter* to third persons (r). And it makes no difference that the master did not actually authorize or even know of the servant's act or neglect, for even if he disapproved of or forbade it he is equally liable if the act be done in the course of the servant's employment (s).

And it is but reasonable that it should be so, for surely it is more just that he whose orders a servant is bound to receive and obey, should suffer for the misconduct of that servant, in matters within the scope of the authority which he has given to the servant, than that an innocent third person should be prejudiced by such misconduct.

Accordingly, numerous instances occur in which this principle, of holding the master responsible *civilliter* for the tortious acts of his servants, has been acted upon and enforced.

r) Story on Ag. 452; Paley on Ag. 294, 298, and cases there cited; Pothier on Oblig. by Evans, No. 456; see also the cases cited, *post*, and *Philadelphia and Reading Railroad Corporation v. Derby*, 41 Howard's (Amer.) Rep. 468.

s) So a landlord is liable for any irregularity committed by his broker in the conduct of the distress: *Huscher v. Lemoyne*, 5 Q. B., N. S. 530; but this would not include acts by the broker outside the scope of his employment; as if he, being authorized to distrain "goods," distrained "fixtures": *Freeman v. Rosher*, 13 Q. B. 780; or seized goods on the wrong premises: *Lewis v. Read*, 13 M. & W. 834; and see *Gauntlett v. King*, 3 Q. B., N. S. 59. So, too, a company was held not to be responsible for an assault committed by their broker when executing their warrant: *Richards v. West Middlesex Waterworks Co.*, 15 Q. B. D. 660. But a landlord might by ratification make himself liable for an act of his broker which he would otherwise not be liable for. And an execution creditor would be liable for a wrong seizure by the sheriff, which was made in consequence of the sheriff being misled by the execution creditor's solicitor: *Morris v. Sadler*, 22 Q. B. D. 611. So a client is liable for the tortious act of his attorney in the conduct of a suit, and cannot shield himself from responsibility by ignorance of a particular Act, nor under the principle, hereafter noticed, that a person who employs a contractor is not liable for the acts of the contractor's servants: *Collett v. Foster*, 26 L. J., Exc. 412. In that case, Bramwell, B., expressed a great desire to limit the doctrine of *respondent superior*, and to make the actual wrongdoer alone responsible. See also *Smith v. Keat*, 9 Q. B. Div. 340.

Thus, where (*t*) the servants of A. brought a coach with two ungovernable horses into Lincoln's Inn Fields, to train them, and they being not to be managed ran upon the plaintiff, the master was held liable for the damage occasioned. *Michael v. Alestree.*

So, where (*u*) a pawnbroker's servant took a pawn, and when the pawner came and tendered the money to the servant, he said he had lost the goods, the master was held liable in trover. So, where the servants of A., with his cart, ran against another cart, wherein was a pipe of sack, and overturned the cart and spoiled the sack, it was held that an action lay against A. And so, where (*v*) a carter's servant ran his cart over a boy, it was held the boy should have his action against the master for the damage he sustained by this negligence. In fact, actions against masters for damages sustained by the negligent driving of their servants are so common, that it is unnecessary to multiply instances of the master's liability in such cases (*w*). *Jones v. Hart.* Negligent driving by servant.

(*t*) *Michael v. Alestree*, 2 Lev. 172. In this case the action was brought against both master and servant; but it is better generally to sue only the master. Either the master can be rendered liable, or the servant, but not first one and then the other; the party damaged cannot obtain compensation against one after he has obtained compensation in respect of the same wrong against the other. So an award of compensation by a magistrate against the driver of a hackney carriage under 6 & 7 Vict. c. 86, is a bar to a subsequent action against the driver's master in respect of the same injuries: *Wright v. London General Omnibus Co.*, 2 Q. B. D. 271. A conviction of a servant for an assault whereby, under 24 & 25 Vict. c. 100, he was released from civil proceedings for the assault would not release his master from any liability: *Dyer v. Monday*, (1895) 1 Q. B. 742. But the recovery of compensation for damage caused to the plaintiff's goods by the negligent driving of the defendant's servant will not be a bar to a subsequent action between the same parties in respect of personal injuries caused to the plaintiff by the same negligent driving: *Brandsen v. Humphrey*, 14 Q. B. D. 141.

(*u*) *Jones v. Hart*, 2 Salk. 441; *Cary v. Webster*, 1 Str. 480; *Mead v. Hammond*, *Armory v. Delamirie*, 1 Str. 505.

(*v*) *Jones v. Hart*, *ubi supra*.

(*w*) In an action for keeping a ferocious dog which bit the plaintiff, evidence of knowledge on the part of a servant of the defendant that the dog was ferocious, may in some cases be evidence against the defendant; as where the servant has been entrusted by the defendant with the care and control of the dog: *Baldwin v. Casella*, L. R., 7 Ex. 325; or where the servant is the defendant's manager, and has control of the premises where the dog is, but not where the servant is merely a carter or a porter employed there: *Stiles v. Cardiff Steam Navigation Co.*, 33 L. J., Q. B. 311. But knowledge on the part of the defendant's wife, who attended to the defendant's business at the premises where the dog was kept, was held to be evidence against the defendant:

So, an innkeeper has been held liable for damage to the horse and gig of a guest through the negligence of the ostler (*x*), though he paid the ostler no wages, but left him to make what he could out of the stables.

Servant
negligently
lighting fire.
Tarberville v.
Stampe.

Again, where (*y*) the defendant's servants so negligently kept a fire lighted in his field, that it extended to and consumed the heath of the plaintiff, the defendant was held liable to an action for the injury, and Lord Holt observed, "If the defendant's servant kindled the fire in the way of husbandry and proper for his employment, though he had no express command of his master, yet his master shall be liable to an action for damage done to another by the fire, for it shall be intended that the servant had authority from his master, it being for his master's benefit" (*z*).

And a coal merchant has been held liable to a passenger for the negligence of his carter in leaving coalshoot open (*a*).

Actions
against
carriers.

Actions against carriers, whether by land (*b*) or

Gladman v. Johnson, 36 L. J., C. P. 153; and knowledge on the part of the barman at the defendant's public-house: *Applebee v. Price*, L. R., 9 C. P. 647. As to the liability of the master for a libel published by his authority, see *Parkes v. Prescott*, L. R., 4 Ex. 169.

(*x*) *Bathur v. Day*, 32 L. J., Exc. 171.

(*y*) *Tarberville v. Stampe*, Lord Raym. 264. And see *Beaulieu v. Finglam*, 2 H. L. 1, fo. 18, pl. 6, cited 1 C. B. 586, note; *Servat v. Suisse*, L. R., 1 P. C. 152; *MacKenzie v. McLeod*, 10 Bng. 385, *post*. A person on whose property a fire *accidentally begins* is not now liable to an action at the suit of any person who may be injured thereby; see 14 Geo. 3, c. 78, s. 86, which is a *general law*: *Richards v. Easto*, 15 M. & W. 251; *Westminster Fire Office v. Glasgow Provident Society*, 13 App. Cas. 699. But where a fire is caused, or having been knowingly lighted is permitted to extend, *by negligence*, the master is still liable, *Felliter v. Phippard*, 11 Q. B. 347; *Black v. Christchurch Finance Co.*, (1891) A. C. 48.

(*z*) Note the difference between this case and *Williams v. Jones*, 3 H. & C. 602, where a master was held *not* liable for a fire caused by the negligent use of a pipe by his servant.

(*a*) *Whitely v. Pepper*, 2 Q. B. Div. 276.

(*b*) By the Carriers Act, 11 Geo. 4 & 1 Will. 4, c. 68, and the Railway and Canal Traffic Act, 1854, 17 & 18 Vict. c. 31, s. 7, the liability of carriers *by land* is limited in certain cases. But by sect. 8 of the first-mentioned Act, it is provided, "That nothing in that Act shall be deemed to protect any mail contractor, stage-coach proprietor, or other common carrier for hire, from liability to answer for loss or injury to any goods or articles whatsoever arising from the *felonious* acts of any coachman, guard, bookkeeper, porter, or other servant in his or their employ, nor to protect any such coachman, guard, bookkeeper, or other servant from liability for any loss or injury occasioned by his or their own personal neglect or misconduct." Felony by the carrier's servant is, therefore, a good answer to a defence under

water (*c*), for loss or injury to goods entrusted to their care, also frequently involve a similar principle, since carriers are generally liable for the honesty of their servants (*d*).

A carrier, however, is not answerable for loss of luggage intrusted to his servant to carry for *his* own private gain (*e*), or in defiance of a known course of business (*f*). Nor is a railway company liable for injuries arising from negligence of their servants, where by a special contract entered into by the consignor all risk of damage, from whatever cause, is agreed to be borne by the consignor (*g*), if the Court or judge trying the cause shall be of opinion that under the circumstances the conditions of the special contract exempting them from liability are just and reasonable. Nor is a carrier by water liable where by special contract he has stipulated not to be liable for passenger's luggage unless a bill of lading was signed, and none was signed (*h*). But in interpreting contracts with carriers by sea, as well as by land, words of general exemption from liability are only intended (unless the

Actions
against car-
riers of goods

the Carriers Act. But mere suspicion is not enough, there must be evidence of felony sufficient to convict a servant of the carrier. See *Hinton v. Dibbin*, 2 Q. B. 646; *Butt v. Great Western Railway Co.*, 11 C. B. 140; *Great Western Railway Co. v. Rimell*, 18 C. B. 575; *Metcalfe v. London, Brighton, &c. Co.*, 27 L. J., C. P. 205, 333; *Vaughton v. London and North Western Railway Co.*, L. R., 9 Exc. 93; *M'Queen v. Great Western Railway Co.*, L. R., 10 Q. B. 569; *Way v. Great Eastern Railway Co.*, 1 Q. B. D. 692. The history of the law and the occasion and effect of the two above-named enactments are discussed in *Shaw v. Great Western Railway Co.*, (1894) 1 Q. B. 373.

(*e*) Railway and Canal Traffic Act 1854, 17 & 18 Vict. c. 31. By the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), sects. 502, 503, the liability of shipowners is limited in certain cases.

(*d*) Sub-contractors' servants are "servants in the employ" of the carrier within sect. 8 of the Carriers Act, *supra*, note (*b*); *Machu v. South Western Railway Co.*, 2 Exc. 415; *Great Western Railway Co. v. Crouch*, 2 H. & N. 491; 3 H. & N. 183. So also is a servant of the proprietor of a receiving office for goods nominated as such by a railway company: *Stephens v. London & S. W. Railway Co.*, 18 Q. B. D. 121.

(*c*) *Butler v. Basing*, 2 C. & P. 613. See *Boucher v. Lawson*, Ca. temp. Hardwicke, 85.

(*f*) *Slim v. Great Northern Railway Co.*, 14 C. B. 647.

(*g*) *Peck v. North Staffordshire Railway Co.*, 10 H. L. C. 473; *Great Western Railway Co. v. M'Carthy*, 12 App. Cas. 218.

(*h*) *Wilton v. Royal Atlantic Mail Steam Navigation Co.*, 30 L. J., C. P. 369.

words are clear) to relieve the carrier from liability where there has been no misconduct or default on his part or that of his servants. So that even in cases within the exceptions of a bill of lading the shipowner is not protected if default or negligence on his part or that of his servants (unless clearly provided against) has contributed to the loss (*i*). Again, carriers have been held liable for goods delivered to their servant, notwithstanding a bye-law that they would not be liable unless booked, in the absence of evidence that they had provided means of booking (*j*).

and passen-
gers.

Carriers of passengers also are responsible for injuries happening to them through the negligence (*k*) of servants (*l*), but not if such injury happen by accident (*m*). Whether or not the injury complained of in any particular case arose from the negligence of servants, or was the effect of accident, would be a question proper for the consideration of a jury (*n*).

(*i*) *Grill v. General Iron Screw Collier Co.*, L. R., 3 C. P. 476; *Czech v. General Steam Navigation Co.*, L. R., 3 C. P. 14; *Chartered Mercantile Bank of India v. Netherlands India Steam Navigation Co.*, 10 Q. B. D. 521; *Steinman v. Angier Line*, (1891) 1 Q. B. 619.

(*j*) *Great Western Railway Co. v. Goodman*, 12 C. B. 313; *Williams v. Great Western Railway Co.*, 10 Ex. 15.

(*k*) *White v. Boulton, Peake*, 81. Under the Metropolitan Hackney Carriage Acts, the relation between cab-proprietor and cab-driver is to be deemed, so far as the public are concerned, to be that of master and servant: *Powles v. Under*, 6 E. & B. 207; *King v. London Improved Cab Co.*, 23 Q. B. D. 281; *Keen v. Henry*, 1894 1 Q. B. 292; overruling *King v. Spurr*, 8 Q. B. D. 104. But apart from those Acts the relation between the proprietor and the driver would ordinarily be that of bailor and bailee: *Venables v. Smith*, 2 Q. B. D. 279; *Fowler v. Lock*, L. R., 10 C. P. 90; *Steel v. Lester*, 3 C. P. D. 121. In *Williams v. Cranston*, 2 Stark. 82, the plaintiff who sued the driver of a stage coach for the loss of a parcel delivered to the defendant for carriage from London to Weybridge was nonsuited, on the ground that he ought to have sued the defendant's master: *Cavenagh v. Such*, 1 Price, 328.

(*l*) A railway company, issuing a through ticket over its own and other lines, is liable to a passenger taking such ticket for negligence on another line, not a portion of theirs. See *Birkett v. Whitehaven Junction Railway Co.*, 28 L. J., Ex. 348; *Hooper v. London & North Western Railway Co.*, 50 L. J., Q. B. 103. This is on the ground that the contract to carry was made with them. But the carrying company would also be liable: *Foulkes v. Metropolitan Railway Co.*, 5 C. P. D. 157.

(*m*) *Crofts v. Waterhouse*, 3 Bing. 319; *Bradley v. Waterhouse*, M. & M. 154. Where the balance is even as to the cause of the accident, the onus is on the plaintiff to turn the scale: *Cotton v. Wood*, 8 C. B., N. S. 568; *Hammack v. White*, 41 C. B., N. S. 588; *Manzon v. Douglas*, 6 Q. B. D. 115; *Wakelin v. London & South Western Railway Co.*, 12 App. Cas. 41.

(*n*) See *Braddon v. Great Northern Railway Co.*, 28 L. J., Ex. 51, where a train was detained by snow.

Some doubt has at times been expressed as to the liability of a corporation for the wrongful acts of its servants, but the whole tenour of authorities from *Yarborough v. Bank of England* (o) down to the present, shows that an action for a wrong lies against a corporation where the thing done is within the purpose of the incorporation, and it has been done in such a manner as to constitute what would be an actionable wrong if done by a private individual. As was observed by Blackburn, J. (p), "if a corporation cannot know anything except by its servants, or do anything except by its servants, it would seem that the corporation must be liable for the knowledge of its servants and the acts of its servants, or not liable at all." And a corporation cannot escape liability in an action of trespass for an assault committed by its servant, on the ground that his appointment was not under seal (q). In recent times the only doubt that has been felt is how far a corporation can be capable of malice. It is clear that an action is capable of being brought against a corporation for a libel published by its servant (r). But more doubt has been felt in cases in which the onus has been on the plaintiff of proving express malice on the part of the defendant. It has been held that an action of malicious prosecution will not lie against a corporation (s), but in later cases (t) the opposite view has been taken. The same sort of question has also arisen in an action of libel in which the judge at the trial ruled that the occasion was privileged, and thus threw on the plaintiff the burden of proving malice on the part of the defendant

Liability of corporations.

Malicious prosecution.

Libel.

(o) 16 East, 6. See *Maund v. Monmouthshire Canal Co.*, 4 M. & G. 452.

(p) *Penhallow v. Mersey Docks and Harbour Board*, 30 L. J., Exc. 331.

(q) *Eastern Counties Railway Co. v. Brown*, 6 Exc. 314.

(r) *Whitfield v. South Eastern Railway Co.*, E. B. & E. 115.

(s) *Stevens v. Midland Counties Railway Co.*, 10 Exc. 352; and see *per* Lord Bramwell in *Abrath v. North Eastern Railway Co.*, 11 App. Cas. 247.

(t) *Edwards v. Midland Railway Co.*, 6 Q. B. D. 287; *Henderson v. Midland Railway Co.*, 24 L. T. Rep. 881; *Kemp v. Courage & Co.*, 7 Times L. Rep. 50; *Rayson v. South London Tramways Co.*, (1893) 2 Q. B. 304; *Cornford v. Carlton Bank*, (1899) 1 Q. B. 392; (1900) 1 Q. B. 22. And see *Bank of New South Wales v. Owenston*, 4 App. Cas. 270.

corporation (*u*), but the case was actually decided on other grounds.

Invasion by
servant of
right to ferry.

Huzzey v.
Field.

Where (*r*) the owner of a boat, which was accustomed to ply for hire and carry passengers across a haven, employed a servant for that purpose, and the servant on one occasion received a passenger on board, and carried him across the haven near the line of an ancient *ferry*, and paid the fare over to his master, it was held that the servant was acting at the time in the course of his master's service, and for his master's benefit, and the master was answerable for his act, and would have been liable in an action on the case for such act, if it had been distinctly proved to have amounted to an invasion of the ferry.

Fraud of
servant.

A person may be liable for a fraud committed by his agent or servant, if the agent or servant committed it while acting within the scope of his authority, while doing, and purporting to do, something on behalf of his employer, although in doing it he commits a wrong which his employer neither sanctioned nor intended. But if the agent or servant is not acting or purporting to act for his employer, the fraud cannot be treated as the fraud of the employer (*w*). It is furthermore necessary, in order that the employer may be rendered liable, that the fraud should be committed by the agent or servant for his employer's benefit. If it was committed by the agent for his own benefit, and his principal did not benefit by the fraud, the principal cannot be made

(*u*) *Nerill v. Fine Arts and General Insurance Co.*, (1895) 2 Q. B. 156; affirmed (1897) A. C. 68.

(*v*) *Huzzey v. Field*, 2 C. M. & R. 432. Where the lessee by parol of a ferry, finding it did not answer, agreed to become servant to the lessor and account to him for the profits of the ferry, his interest as tenant was held to have been surrendered by operation of law: *Peter v. Kendal*, 6 B. & C. 703. In *Blackwell v. Wiswall*, 24 Barbour's (Amer.) Rep. 355, the lessor of a ferry was held not liable for the acts of lessee's servants.

(*w*) *Thorne v. Heard*, (1895) A. C. 495. In *Newlands v. National Employers' Accident Association*, 54 L. J., Q. B. 428, a company was held not liable for fraudulent representations made by its secretary in order to induce people to take shares in the company, he having no authority to make any representations for that purpose.

liable for it. This was laid down by Willes, J., in a case in the Exchequer Chamber (x), in which he said :—

*Barwick v.
English Joint
Stock Bank.*

“ If it was a fraud on the part of the manager, then arises the question whether the bank, the employers, are answerable for it? It is enough to say as to that, that we conceive we are in no respect overruling the opinion of two of the learned Barons, Martin and Bramwell, in the case of *Udell v. Atherton*, which was most relied on to establish the proposition that a principal is not answerable for the fraud of his agent. Upon looking to that case it seems very clear that the division of opinion which took place in the Court of Exchequer arose, not so much on the question whether the principal is answerable for the act of his agent in the course of his business (for that question was settled as early as Lord Holt's time), as on the application of that principle to the peculiar facts of the case. The person whose act was relied on there as constituting a liability on the sellers was the defendant's agent, adopted by them under peculiar circumstances, and not being their general agent in their business as the manager of the bank is here. But with respect to the question whether a principal is answerable for the acts of his agent done in the course of his master's business, and for the master's benefit, no sensible distinction can be drawn between the case of fraud and that of any other wrong, as to which the general rule is that the master is answerable for such wrong if committed in the course of his service, and for his benefit. That is the principle which is acted on every day in running-down cases, and which has been applied also to direct trespasses to goods, as where owners of ships have been held liable for the acts of the masters abroad in improperly selling cargoes. It has been held applicable to actions of false imprisonment in cases where officers of a railway company intrusted with the execution of bye-laws have wrongfully, but intending to act in the course of their duty, imprisoned persons supposed to have come within the bye-laws. It has been acted on in the case of a person employed by the owner of boats to navigate boats and take fares for their use where a ferry has been infringed or suchlike wrong committed. In all these cases it may be said, as it was said here, that the master had not authorized the act. It is true he has not authorized the particular act, *but he has put his agent in his place as to a class of acts, and he must be answerable for the manner in which the agent conducts himself in doing his business* ” (y).

And for this purpose there is no difference between a fraud carried out by means of a forgery and any other fraud (z).

(x) *Barwick v. English Joint Stock Bank*, L. R., 2 Exe. 259. That it is essential that the fraud be committed for the master's benefit, see *Houldsworth v. City of Glasgow Bank*, 5 App. Cas. 317; *British Mutual Banking Co. v. Charnwood Forest Railway Co.*, 18 Q. B. D. 714; *Whitechurch v. Cavanagh*, 85 L. T. Rep. 349.

(y) This judgment has also been approved of and followed in *Swift v. Winterbottom*, L. R., 8 Q. B. 244; *Mackay v. Commercial Bank of New Brunswick*, L. R., 5 P. C. 394; *Swire v. Francis*, 3 App. Cas. 106; and see *Chapleo v. Brunswick Benefit Building Society*, 6 Q. B. D. 696.

(z) *Shaw v. Port Philip Gold Mining Co.*, 13 Q. B. D. 103.

Upon this principle a sheriff has been held liable for the fraud of his officer (*a*), and an attorney has been compelled to pay costs occasioned by his clerk fraudulently simulating the Seal of the Court upon a writ; Jervis, C. J., remarking, "There are many acts of a servant for which, though criminal, the master is civilly responsible by action" (*b*).

Servant enabled to commit fraud by master's negligence.

Bank of Ireland v. Trustees of Evans's Charities.

It has, however, been held in the House of Lords (*c*), that negligence of trustees of a corporation, in leaving the corporate seal in the hands of the secretary, whereby he was enabled fraudulently to affix it to five powers of attorney for the transfer of stock belonging to the corporation, did not prevent them from saying that the powers of attorney were forged, and suing the bank for not transferring the stock on their subsequent application. In giving the opinion of the judges to the House of Lords in that case, Lord Wensleydale said,—

"If a man should lose his cheque-book, or neglect to lock the desk in which it is kept, and a servant or stranger should take it up, it is impossible, in our opinion, to contend that a banker paying his forged cheque would be entitled to charge his customer with that payment. Would it be contended that, if he kept his goods so negligently that a servant took them and sold them, he must be considered as having concurred in the sale, and so be disentitled to sue for their conversion on a demand and refusal?"

Telegraph clerk sending wrong message.

It may be convenient to mention in this place that it has been held that a telegraph company are not liable to an action at the suit of the receiver of a wrong message for the mistake of their clerk in transmitting it, although the mistake caused serious loss to the plaintiff (*d*).

a *Raphael v. Goodman*, 8 A. & E. 565. In *Wright v. Child*, L. R., 1 Ex. 358, it was held that the sheriff's officer was not the agent of the execution creditor.

b *Dunkley v. Ferris*, 11 C. B. 457.

c *Bank of Ireland v. Trustees of Evans's Charities*, 5 Ho. Lords Cas. 389. The secretary had been convicted of the forgery. The negligence must be the neglect of some duty in or immediately connected with the transaction in question, and the proximate cause of the fraud of the servant: *Suan v. North British Australasian Co.*, 2 H. & C. 175; *Guardians of Halesfar Union v. Wheehwright*, L. R., 10 Ex. 183; *Mayor, &c. of Merchants of the Staple of England v. Bank of England*, 21 Q. B. 10, 160; and see *Bank of England v. Vagliano*, [1891] A. C. 107.

d *Dickson v. Reuter's Telegraph Co.*, 3 C. P. D. 1, following *Playford v. United Kingdom Electric Co.*, L. R., 4 Q. B. 706.

The rule that a master is responsible for the acts of his servants applies, not only to domestic servants who may have the care of carriages, horses and other things in the employ of the family, but extends to other servants whom the master or owner selects and appoints to do any work or superintend any business, although such servants be not in the *immediate* employ or under the superintendence of the master. As, for instance, if a man is the owner of a ship, he himself appoints the master, and he desires the master to appoint and select the crew; the crew thus become appointed by the owner, and are his servants for the management and government of the ship, and if any damage happens through their default it is the same as if it happened through the immediate default of the owner himself. The same principle prevails if the owner of a farm has it in his own hands, and does not personally interfere in the management, but appoints a bailiff or hind who hires other persons under him, all of them being paid out of the funds of the owner and selected by himself, or by a person specially deputed by him; if any damage happen through their default the owner is answerable, because their neglect or default is his, as they are appointed by and through him (*e*). So in the case of a mine, the owner employs a steward or manager to superintend the working of the mine, and to hire under-workmen, and he pays them on behalf of the owner. These under-workmen then become the immediate servants of the owner, and the owner is answerable for their default in doing any acts on account of their employer (*f*).

Master's liability extends to persons not immediately employed by himself, if they are *his* servants.

(*e*) *R. v. Hoseason*, 14 East, 605. In *Foreman v. Mayor, &c. of Canterbury*, L. R., 6 Q. B. 214, Blackburn, J., said, "It is probable that the negligence was not that of the surveyor, but of some subordinate who though appointed by the surveyor, still was the servant of the local board as much as a guard or a porter on a railway is the servant of the company, although they are appointed by the manager or the secretary." See also *Taylor v. Greenhalgh*, L. R., 9 Q. B. 487.

(*f*) *Per* Littledale, J., in *Laugher v. Pointer*, 5 B. & C. 554; and see *per* Mullett, J., in *Blake v. Ferris*, 1 Seld. (American) Rep. 48. In *Stone v. Cartwright*, 6 T. R. 411, it was held that the agent of a colliery, belonging to an infant, who was appointed manager by the Court of Chancery, was *not* liable for damage caused by colliers hired by a bailiff

*Weyland v.
Elkins.*

Upon this principle it was that the defendant was held liable in *Weyland v. Elkins* (*g*) for damage done to the plaintiff's house by a waggon being driven against it. The defendant and D. were carriers from London to Gosport, and by an arrangement between them D. horsed the waggon from London to Farnham, and the defendant then conducted it from Farnham to Gosport. At the time the mischief happened the waggon was drawn by D.'s horses, and was driven by a servant of D., who had been hired by and received his wages from D., and with whose employment the defendant had no concern whatever, but the waggon was the property of the defendant; and Gibbs, C. J., held that the action might be maintained "upon this principle: the waggon belongs to Elkins, and he receives the profits derived from the use of it. On what terms he engages with D. we do not know, but being jointly entitled with D., and since it is no objection that D. had not been joined, the case is the same as if Elkins had received all the profits. Then since the waggon was to be drawn for the benefit of Elkins, the servant to all legal purposes was the servant of Elkins, although for inferior purposes, and as between the parties he may be considered as the servant of D."

*Willetts v.
Boote.*

It was upon this principle also that, where a firm of potters engaged workmen to work in their manufactory for a year at daily wages, and on the same day engaged R. to work for them by piecework for the same period, and the work which the workmen had to do was in fact included in the piecework of R., and R. paid the workmen's wages out of the amount paid to him by the firm for piecework, it was held that the workmen were the servants of the firm, so as to be liable to conviction for leaving their employment, under the statute, since repealed, of 4 Geo. 4. c. 34 (*h*).

employed under him to superintend the works. The action should have been against the infant.

(*g*) Holt, N. P. 227. See the reporter's note at the end of the report.

(*h*) *Willetts v. Boote*, 30 L. J., M. C. 6.

And so where a corn-factor was absent from his shop, and, during his absence, his sister managed his business : she wanted to send out some corn to a customer, and for this purpose employed a person who occasionally worked for her brother, and who at the time of such employment was in a state of inebriety. This man, contrary to the practice of the corn-factor's shop, took out the corn on a small warehouse truck, which he negligently left on the road, whereby a person driving along in a chaise was injured : the corn-factor was held liable in an action at the suit of this person (i).

Wanstall v. Pooley.

Though the general rule of law is perfectly clear that a master is not civilly responsible for a wrong done by his servant, unless it be done in the course of the servant's employment (j), or within the scope or sphere of his employment, it is sometimes difficult to apply the law in particular cases and to decide whether or not any particular act or omission by a servant can be said to have taken place in the course of his employment.

Master's liability for acts of servant in the course of employment.

Disobedience to his master's express orders will not in every case have the effect of making the act disobediently done by the servant an act outside the scope of his employment so as to relieve the master from liability (k). Much depends on the orders of the master

Though disobedient.

(i) *Wanstall v. Pooley*, Q. B., M. T. 1841, 6 Cl. & F. 910, note.

(j) The law was thus laid down by Willes, J., in *Bayley v. Manchester, Sheffield and Lincolnshire Railway Co.*, L. R., 7 C. P. 415, affirmed in the Exchequer Chamber, L. R., 8 C. P. 148: "A person who puts another in his place to do a class of acts in his absence necessarily leaves him to determine, according to the circumstances that arise, when an act of that class is to be done, and trusts him for the manner in which it is done; and consequently he is held answerable for the wrong of the person so entrusted either in the manner of doing such an act, or in doing such an act under circumstances in which it ought not to have been done; provided that what was done was done, not for any caprice of the servant, but in the course of the employment." The expression "course of employment" seems to mean the same as "scope of authority," a form of words which is often used: Rigby, L. J., in *Dyer v. Monday*, (1895) 1 Q. B. 742. See the cases decided on the meaning of "out of and in the course of his employment" in sect. 1 of the Workmen's Compensation Act, 1897, in the Appendix.

(k) *Limpus v. General Omnibus Co.*, 1 H. & C. 526; *Betts v. de Vitre*, L. R., 3 Ch. 429, at 442. In *Coupe Co. v. Maddick*, (1891) 2 Q. B. 413, the defendant had hired a carriage and horse from the plaintiffs. His coachman used the carriage and horse for purposes of his own, and in so doing drove so negligently as to damage them. The Court, pointing out the difference

who has a right to limit the sphere of his servant's employment; but if the servant, acting within that sphere, violates the orders of his master, his master is responsible to third persons to whom damage is thereby caused (*l*).

*Ruddiman
v. Smith.*

In *Ruddiman v. Smith* (*m*) Lord Coleridge, C. J., said that it was difficult to say that it is within the scope of a clerk's employment to wash his hands, but it is clearly "an incident to his employment"; and it was held that where a clerk upon leaving off his day's work, turned on the tap in a lavatory provided for the use of himself and other clerks in the defendant's service, and then went away without turning the tap off, so that in the night the water overflowed, and going through the floor, damaged the plaintiff's goods in the room below, the employer of the clerk was responsible for the clerk's negligence. The Court distinguished this case from an earlier one (*n*), in which also a clerk negligently left the tap of a lavatory turned on, so that the water overflowed and damaged the property of the plaintiffs in the room below. There the employer of the clerk was held not to be answerable for the negligence of his servant because the clerk had been forbidden to enter the room where the tap was, and was therefore a trespasser when he went into the room and committed the negligent act complained of.

Carriage cases.

Some of the cases in which the question has been raised whether the servant in what he did was intending to act for his master, or whether he was acting for purposes of his own, have arisen out of the driving of carts and horses.

between that case and a case where a master is liable to a wayfarer injured by the negligent driving of his servant, held that the defendant was liable to the plaintiffs for the breach of his contract, as bailee of the carriage and horse, to return them in the condition in which he received them, fair wear and tear and certain accidents excepted.

l *Whitchhead v. Reader*, 1901 2 K. B. 48.

m 60 L. T. Rep. 708.

n *Stevens v. Woodward*, 6 Q. B. D. 318. In *Milner v. Great Northern Railway Co.*, 50 L. T. Rep. 367, a clerk at the parcels office on the defendant's railway took a parcel to the train for a passenger and it was held that there was evidence before the Court, that in doing this he was acting within the scope of his employment.

In an action (o) for the negligent driving of the defendant's coachman, whereby the plaintiff's carriage was upset; it appeared that the accident arose from the defendant's coachman striking the plaintiff's horses with his whip, in consequence of which they moved forward, and the chariot was overturned. At the time when the horses were struck the two carriages were entangled. The defendant was held liable for the damage caused by his servant's act, although wanton, as it was done in pursuance of his employment. And, *per Curiam*: "The distinction is this; if a servant driving a carriage, in order to effect some purpose of his own, *wantonly* strike the horses of another person, and produce the accident, the master will *not* be liable. But if, in order to perform his master's orders, he strikes, but *injudiciously*, and in order to extricate himself from a difficulty, that will be negligent and careless conduct, for which the master *will* be liable, being an act done in pursuance of the servant's employment."

Coachman striking another person's horses whilst driving his master.
Croft v. Alison.

So, if a coachman were driving his master, and were ordered not to drive so fast, but he nevertheless continued to do so, and an accident occurred in consequence, the master would be responsible for the injury; for in that case the coachman would still be driving *for his master*, though driving badly (p).

Coachman driving too fast.

So a master was held (q) liable for damage caused by the negligent driving of his cart in the city by his servant, although it was proved that the cart ought not, in

Servant making *détour* with master's cart.

(o) *Croft v. Alison*, 4 B. & Ald. 590. In *Welsh v. Lawrence*, 2 Chit. 262, evidence that the chainstay of a cart broke, in consequence of which the horse ran away and plaintiff's horse was injured, was held to support an action for negligent driving by defendant's servant, as the master is bound to have good tackle.

(p) 7 M. & G. 566; see *Sleath v. Wilson*, 9 C. & P. 612.

(q) *Joc v. Morison*, 6 C. & P. 501. In *Booth v. Mister*, 7 C. & P. 66, a master was held liable for damage caused by his cart, which was intrusted to his servant, but which another person, a friend of the servant, was driving when the accident happened; Lord Abinger saying he thought that as the defendant's servant was in the cart, the reins being held by another man made no difference. See also *Wheatley v. Patrick*, 2 M. & W. 650.

*Joel v.
Morison.*

carrying out his orders, to have been in the city at all ; and Lord Wensleydale said :—

“ If the servant, being on his master's business, took a *détour* to call upon a friend, the master will be responsible. If you think the servant lent the cart to a person who was driving without the defendant's knowledge, he will not be responsible. Or if you think that the young man who was driving took the cart surreptitiously, and was not at the time employed on his master's business, the defendant will not be liable. The master is only liable where the servant is acting in the course of his employment. If he was going out of his way against his master's implied commands, when driving on his master's business, he will make his master liable ; but if he was going on a frolic of his own, without being at all on his master's business, the master will not be liable.”

*Sleath v.
Wilson.*

Again, a master was held (r) liable for damages caused by the negligent driving of his servant, who, after having set his master down, drove round to deliver a parcel of his own, and did not drive *directly* where he was ordered to go, Erskine, J., saying,—

“ Evidence has been given that the master directed the servant to drive to the Red Lion, in Castle Street, but that the servant improperly drove to the Old Street Road to deliver a parcel of his own ; and the point has been put to the Court that, inasmuch as it is clear that the servant was not at that time engaged in his master's business, this action cannot be maintained. But I am of opinion that this action may be maintained. I think the law has been most properly laid down by Mr. Baron Parke in the case which has been cited (s). It is quite clear that if a servant without his master's knowledge takes his master's carriage out of the coach-house, and with it commits an injury, the master is not answerable, and on this ground, that the master has not intrusted his servant with the carriage. But *whenever the master has intrusted the servant with the control of the carriage it is no answer that the servant acted improperly in the management of it*” (t).

*Mitchell v.
Grueneweller.*

But in the two cases next mentioned, the master was held not responsible. The defendants' carman, having finished the business of the day, returned to their shop in Welbeck Street with their horse and cart, and got the key of the stable, which was close by, but instead of going there at once and putting up the horse as it was

(r) *Sleath v. Wilson*, 9 C. & P. 607 ; *S. C.* nomine *Heath v. Wilson*, 2 M. & Rob. 181.

(s) *Joel v. Morison*, *ubi supra*.

(t) But see what Cockburn, C. J., said as to this in giving judgment in *Storven v. Ashton*, cited on the next page.

his duty to do, he, without his masters' knowledge or consent, drove a fellow-workman to Euston Square, and on his way back ran over and injured the plaintiff; it was held, that inasmuch as the carman was not at the time of the accident engaged in his masters' business, they were *not* responsible for the consequences of his unauthorized act (*u*). And Maule, J., said, "The master is liable, even though the servant, in the performance of his duty, is guilty of a deviation or a failure to perform it, in the strictest and most convenient manner. But where the servant, instead of doing that which he is employed to do, does something which he is not employed to do at all, the master cannot be said to do it by his servant, and therefore is not responsible for the negligence of the servant in doing it." *Mitchell v. Crassweller.*

So where a wine merchant, carrying on business in V. Street, Minorities, sent his clerk in a cart to deliver wine at Blackheath, and it was the carman's duty to bring back empty bottles to V. Street, and then to put up the horse and cart; but on the way back the clerk asked the carman to drive him to his house in the City Road, and asked him to go elsewhere, and when they had proceeded *about two miles out of the way*, the plaintiff was knocked down by the cart and seriously injured, the defendant was held not liable (*r*). And Cockburn, C. J., said:— *Storey v. Ashton.*

"I think the law as laid down in *Mitchell v. Crassweller* presents us with a true view of the case. I cannot adopt the proposition of Erskine, J., in *Sleath v. Wilson*, that whenever the master has intrusted his servant with the control of the carriage it is no answer that the servant acted improperly in the management of it. I think that a servant can only be said to be acting in the employment of his master, so long as he is doing some act with his master's assent. I think that if a driver while acting in his master's business were to make a slight deviation in order to carry some business of his own into effect, in such a case the master might be liable, and that the question would be one of degree as regards the extent of the deviation. But this is not the present case. Here the man starts upon an entirely independent journey which has nothing to do

(*u*) *Mitchell v. Crassweller*, 13 C. B. 237.

(*r*) *Storey v. Ashton*, L. R., 4 Q. B. 476.

*Storey v.
Ashton.*

with that which he undertook on behalf of his employer. While returning home by way of King William Street he starts on a journey to the City Road, and is two miles out of the way when the accident happens. In *Mitchell v. Crossweller*, the driver after returning to his master's house started upon an entirely independent journey. Here the case is not quite so strong, but in deviating as he did the driver did in fact start upon an independent journey. I think that it would be a strange thing to hold that in such a case the master is responsible." Mellor, J., and Lush, J., concurred.

*Rayner v.
Mitchell.*

If a servant without his master's permission, and for a purpose of his own wholly unconnected with his master's business, takes out his master's horse and cart, and by his negligence in driving injures some one on the road, the fact that he had used the opportunity of being out with the cart to call on his master's customers and do jobs of such a nature as he was usually employed to do, will not make his master answerable for his negligence (*w*).

But where a servant is employed to manage a horse and cart for the day, the fact that while it is under his charge he uses it for some purpose of his own, though in violation of his instructions, will not render his use of the cart outside the scope of his authority (*x*).

*Gracey v.
Belfast Tram-
way Co.*

Two servants were directed to take two horses from their stables to a forge to be shod. They raced along the road to see who could get to the forge first, and the noise they made caused the plaintiff's horse to take fright and bolt, whereby the plaintiff was upset and injured. It was held (*y*) that the servants were acting within the scope of their authority so as to make their master liable.

*Lompus v.
General
Omnibus Co.*

This liability of the master for the act of his servant when driving for him is forcibly illustrated by a case (*z*) in which an omnibus company were held liable for the acts of their driver in "nursing" a rival omnibus,

w, *Rayner v. Mitchell*, 2 C. P. D. 357; *Cormack v. Dugby*, 1 R., 9 C. L. 557.

x, *Whatman v. Pearson*, 1 R., 3 C. P. 422; *Venables v. Smith*, 2 Q. B. D. 279.

y, *Gracey v. Belfast Tramway Co.*, (1901) 2 Ir. R. 322.

z, *Lompus v. London General Omnibus Co.*, 1 H. & C. 526.

whereby the omnibus of the defendants ran against the horses and omnibus of the plaintiff and overturned it, although it was a direct contravention of the printed regulations of the company to race with or obstruct other omnibuses or hinder or annoy the driver or conductor thereof in his business, whether that omnibus be one belonging to the company or otherwise. And the Exchequer Chamber upheld the direction of Martin, B., to the jury, that if the defendants' driver being irritated acted carelessly, recklessly, wantonly or improperly, but in the course of his employment, and in doing that which he believed to be for the interests of the defendants, then the defendants were responsible for the acts of their servant: that the instructions given by the defendants to the driver not to obstruct other omnibuses, if he did not pursue them, were immaterial as to the question of the masters' liability, but if the true character of the driver's act was that it was an act of his own, and in order to effect a purpose of his own, then the defendants were not responsible (a).

*Limpus v.
General
Omnibus Co.*

The defendants sent a barge under the management of a lighterman to a wharf to be loaded; he was unable to get up to the wharf in consequence of the plaintiff's barge lying in the way without any one in charge of it. The foreman of the wharf told him to shove the plaintiff's barge away as it had no business there, and to bring his own alongside. He moved the plaintiff's barge, and made it fast to a pile in the river. When the tide went down

*Page v.
Defries.*

(a) In *Ward v. London General Omnibus Co.*, 42 L. J., Q. B. 265, Blackburn, J., said, "a man is responsible for his servant's act in his business, though the servant be excited by drink or passion; but if the servant act for private spite, if the act be done so as to divest him of his character as servant, the master is not responsible." In America it has been held that the rule, relieving a master from liability for a malicious injury inflicted by his servant, when not acting within the scope of his employment, does not apply as between a common carrier of passengers and a passenger: *Stewart v. Brooklyn and Crosstown Railroad Co.*, 90 N. Y. Rep. 588. So a railway company has been held liable when their conductor assaulted and kissed a female passenger: *Croaker v. Chicago and North Western Railway Co.*, 17 Amer. Rep. 504; and for an assault by a brakeman upon a passenger who accused him of having stolen his watch: *Chicago and Eastern Railroad Co. v. Flaxman*, 42 Amer. Rep. 33.

the plaintiff's barge settled upon a projection in the bed of the river and was injured (*b*). It was held that the defendants were liable, as the lighterman was acting within the scope of his employment as their servant.

Patten v. Rea.

Where the general manager of the defendant, a horse-dealer, had a horse and gig of his own, which he used for the defendant's business as well as his own, and was allowed to keep them on defendant's premises at his expense; and on one occasion the manager, on putting the horse into the gig, told defendant he was going to S. to collect a debt for him and afterwards to see his own doctor, and before he got to S. he ran the gig against and killed the plaintiff's horse; it was held that there was abundant evidence to make the defendant responsible, although he had not expressly requested the manager to use the horse and gig on that occasion. And it was also held that the proper question to leave to the jury is, whether at the time of the act complained of, the servant was driving on his master's business and with his authority (*c*).

In the two following cases questions were raised as to the implied authority of servants of omnibus proprietors with regard to the management of omnibuses, the plaintiff in both cases having been injured by negligent driving.

*Gwilliam
v. Twist.*

In one case (*d*), the driver in the defendants' service was lawfully forbidden by a police inspector to continue driving on account of his being the worse for drink, and not in a fit state to drive. A man standing by volunteered to drive the omnibus home, and did so with the driver's permission, but so negligently as to injure the plaintiff. It appeared that when the driver was forbidden by the police to continue driving, the omnibus was only a

(*b*) *Page v. Defries*, 7 Best & S. 137; overruling *Lamb v. Palk*, 9 C. & P. 629.

(*c*) *Patten v. Rea*, 2 C. B., N. S. 606.

(*d*) *Gwilliam v. Twist*, (1895) 2 Q. B. 84.

quarter of a mile from the defendants' yard, and that there was no necessity for taking it home immediately, without first communicating with the defendants. The Court therefore held that there was no evidence on which it could be said that it was within the scope of the driver's authority to delegate the driving of the omnibus to any one else, so as to render the defendants liable for the negligent driving of such a person.

In the other case (e) also the Court held that on the evidence the defendants were not liable. The plaintiff had been injured by the negligent driving of the conductor of an omnibus who, at the end of a journey, and in the absence of the regular driver, took charge of the omnibus and drove it round through some neighbouring by-streets, apparently with the intention of turning it round, ready to start for the next journey.

Beard v. London General Omnibus Co.

The extent to which a master may be answerable for the conduct of his servant in giving into custody a person suspected of having committed a criminal offence has also been the subject of several decisions. In these cases as in other cases where a master is sought to be made liable for the act of his servant the questions for the jury will be first as to the scope of the servant's employment, and then, if the act be within the scope, as to the purpose with which the act was done, whether in the interests of the master or for the servant's own benefit (f).

Servant giving into custody a person suspected of a criminal offence.

In the case of certain statutory offences power has been given by Act of Parliament to railway companies to apprehend and detain the offender. When an offence of this kind has been committed, the higher officials of the railway company, such as stationmasters and inspectors, would be presumed to be authorized by the company to exercise the company's statutory powers (g); but if

(e) *Beard v. London General Omnibus Co.*, (1900) 2 Q. B. 530.

(f) *Limpus v. London General Omnibus Co.*, 1 H. & C. 526; *Dyer v. Munday*, (1895) 1 Q. B. 742; *Ferry v. Great Northern Railway Co.*, (1898) 2 Ir. R. 352.

(g) *Goff v. Great Northern Railway Co.*, 30 L. J., Q. B. 148; *Moore v. Metropolitan Railway Co.*, L. R., 8 Q. B. 36; *Kirkstall Brewery Co. v. Furness Railway Co.*, L. R., 9 Q. B. 468.

a stationmaster apprehended a person for doing an act in respect of which the railway company had no power to apprehend any one, his act would not be presumed to be within the scope of the authority given to him (*h*). But a company would not be relieved from liability, merely because no offence was in fact committed (*i*). Authority to a servant to turn out a passenger misconducting himself necessarily includes authority to the servant to judge for himself who is such a passenger (*j*). So, too (*k*), a railway company was held responsible where a porter, authorized by them to prevent passengers from going by wrong trains, violently pulled a passenger out of a carriage, thinking, though wrongly, that the passenger was in a wrong train.

For protection
of master's
property.

Under some circumstances a servant may have an implied authority from his master to give into custody a person suspected of stealing the master's goods. But in the case of an ordinary servant, no such authority will be implied unless the act of the servant which is complained of was necessary for the protection of the property entrusted to him, and in such case the time, place, and opportunity of consulting the employer before acting would be material circumstances to be considered in determining the question of authority (*l*). Thus a railway booking clerk was held (*m*) to have no implied authority to give into custody a man who had merely attempted to rob the company's till, but failed to get possession of any money. So, too, a

(*h*) *Poulton v. London and South Western Railway Co.*, L. R., 2 Q. B. 534.

(*i*) *Goff v. Great Northern Railway Co.*, *ubi supra*.

(*j*) *Seymour v. Greenwood*, 30 L. J., Exc. 328; *Low v. Great Northern Railway Co.*, 62 L. J., Q. B. 524.

(*k*) *Bowley v. Manchester, Sheffield and Lincolnshire Railway Co.*, L. R., 7 C. P. 415; L. R., 8 C. P. 148.

(*l*) *Bank of New South Wales v. Owen*, 4 App. Cas. 270, where it was held that the manager of a bank has no implied authority to give a man into custody for stealing a bill of exchange when the arrest is not necessary for the protection of the property of the bank, but was only for the purpose of punishing him and vindicating the law.

(*m*) *Allen v. London and South Western Railway Co.*, L. R., 6 Q. B. 65; and see *Knight v. North Metropolitan Tramway Co.*, 78 L. T. Rep. 227.

foreman porter in superintendence of a station yard was held (*u*) to have no implied authority to give the plaintiff into custody on a charge of stealing timber lying near the station, the act of the porter not being done in the exigencies of the company's traffic. And where the manager of a public-house gave the plaintiff into custody on the charge of attempting to pass bad money, it was held (*o*) that as no property of the manager's employer was in danger, the manager had no authority to do what he had done, and his employer was not liable. And in another case (*p*) where the manager of a public-house gave the barman into custody on a charge of stealing whisky from the cellar, it was held that the manager's employer was not liable as there was no evidence that his property could only be protected by means of an immediate arrest.

Where the defendants had authorized a bailiff to levy a rate they were held not to be responsible for an assault which he committed when executing the warrant (*q*).

And a master has been held liable for damage done to a third person which would not have happened but for the negligence of the defendant's servant, although the immediate cause of the damage was a stranger.

Master liable though injury immediately caused by stranger.

Thus, a master scavenger was held liable for injury caused by the negligence of his servant in leaving his cart and horse unattended in the street, although the immediate cause of the injury was a passer-by who struck

Illidge v. Goodwin.

(*u*) *Edwards v. London and North Western Railway Co.*, L. R., 5 C. P. 445.

(*o*) *Abrahams v. Deakin*, (1891) 1 Q. B. 516.

(*p*) *Hanson v. Waller*, (1901) 1 K. B. 390. In *Van den Eynde v. Ulster Railway Co.*, L. R., 5 C. L. 328, the defendants were held liable where their stationmaster detained and searched the plaintiff who was suspected of attempting to travel by means of a stolen ticket which was the property of the defendant company.

(*q*) *Richards v. West Middlesex Waterworks Co.*, 15 Q. B. D. 660. In Ireland it was held in *Kinsella v. Hamilton*, 26 L. R., Ir. 671, that an authority to distrain goods gives no implied authority to take human life in order to levy the distress. See the judgment of Pales, C. B., where he says that the ground of the responsibility of a master for wrongs committed by his servant is that the master gave the servant implied authority to determine whether a state of facts had occurred in which the act might legally have been done.

the horse, which backed the cart into the plaintiff's shop-window (*r*). In that case it was a misfeasance to leave the horse unattended (*s*).

Extent of
master's
liability.

Generally speaking, said Pollock, C. B. (*t*), in delivering the judgment of the Court of Exchequer, where an injury arises from the misconduct of another, the party who is injured has a right to recover from the injuring party "for all the consequences of that injury." But in another case (*u*) decided on the same day, he said that he entertained "considerable doubt whether a person who is guilty of negligence is responsible for all the consequences which may under any circumstances arise, and in respect of mischief which could by no possibility have been foreseen and which no reasonable person would have anticipated."

Master not
responsible
for servant's
acts outside
the scope of
his employ-
ment.

The following cases are instances in which a master has been held to be not responsible for the wrongful act of his servant, because the act complained of was outside the scope of the servant's employment.

M. Kenzie v.
M. Lead.

A master was held (*r*) not liable for the act of his housemaid in lighting furze and straw with a view to clean a chimney which smoked, whereby the house was burnt down, as she was merely employed to light the fire, and others were employed to clean the chimney, and, moreover, she had been expressly cautioned not to attempt to clean the chimney in that way: the Court considering that in acting as she did she was acting beyond the scope of her employment, which was merely to light the fire.

(*r*) *Hudge v. Goodwin*, 5 C. & P. 190. And see *Clark v. Chambers*, 3 Q. B. D. 327. The question is whether the negligence of the servant was the effective cause of the damage, and that is a question of fact in each case: *Engelhart v. Farrant*, (1897) 1 Q. B. 240.

(*s*) See 3 E. & B. 153, and *Harrison v. Great Northern Railway Co.*, 33 L. J., Exc. 266.

(*t*) *Rogby v. Hewitt*, 5 Exc. 240.

(*u*) *Greenland v. Chaplin*, 5 Exc. 243. See *Sharp v. Powell*, L. R., 7 C. P. 253; *Clark v. Chambers*, 3 Q. B. D. 327. Lord Esher, M. R., in *Re London, Tilbury, &c. Railway Co.*, 24 Q. B. D. 326, 329, and Bowen, L. J., in *Cobb v. Great Western Railway Co.*, (1893) 1 Q. B. 159.

(*v*) *M. Kenzie v. M. Lead*, 10 Bing. 385.

Again (*w*), a master was held not liable for an unlawful act committed by his servant, who was authorized to distrain cattle damage feasant on his land, in *driving the plaintiff's horses*, which were on the highway, *on to* his master's land and then distraining them, as the doing so was not within the scope of his authority; and Patteson, J., said, "A master is liable where his servant causes injury by doing a lawful act negligently, but not where he *wilfully* does an illegal one."

Lyons v. Martin.

So if a man sends his servant on an errand without providing him with a horse and he meets a friend who has one, who permits him to ride, and an injury happens in consequence, the master is not responsible for that act. If it were so, every master might be ruined by acts done by his servant without his knowledge or authority (*x*).

Goodman v. Kennell.

And the proprietors of a sewage farm, of which B. was manager, were held not liable for a trespass upon the land of an adjoining owner committed by B. which he had no express authority from the defendants to commit, although it was done to improve the drainage from the farm and benefit the neighbourhood (*y*).

Bolingbroke v. Swindon Local Board.

The principle upon which these cases were decided is further illustrated by the following American case:—

The defendant's servant was driving his waggon and team, and the plaintiff's son (a boy on his way to school) *asked for* a ride. The servant said he might when they got up the hill he was then ascending. When the hill was ascended, the lad took hold of the side of the waggon, between the front and hind wheels. The driver did not stop. He was cautioned by a bystander, that if he did not stop he would kill the boy. He looked behind him. The horses were walking, and the driver seeing the plaintiff's son and other boys attempting to get on the waggon, cracked his whip, and put the horses into a

Wright v. Weir.

(*w*) *Lyons v. Martin*, 8 A. & E. 512. See *Limpus v. General Omnibus Co.*, *ante*, p. 300.

(*x*) *Goodman v. Kennell*, 3 C. & P. 167.

(*y*) *Bolingbroke v. Swindon Local Board*, L. R., 9 C. P. 575.

*Wright v.
Wilcox.*

trot. The plaintiff's son fell, and the hind wheel went over and injured him: it was held, that as the driver whipped the horses, intending to throw the boy off, this was a wrong on the part of the servant, for which the master was *not* liable, any more than he would have been for an assault committed by the servant (2).

*Grant v.
Norway.*

So, if a master of a ship sign a bill of lading for goods which have never been shipped (a): or a wharfinger's servant fraudulently sign a receipt, purporting to be an acknowledgment that certain goods have been delivered at his master's wharf to be shipped, no such goods having in fact been delivered (b): neither the wharfinger in one case, nor the shipowner in the other, will be bound by such act of their servant. In neither case was there any actual authority to do the act complained of, nor did the facts warrant the inference of an implied authority.

*Coleman v.
Riches.*

And if one employ another to do an act which may be done in a lawful manner, but the latter in doing it commit a public nuisance, the employer is not responsible (c). Under ordinary circumstances the authority of the agent is limited to that which is lawful. If, in seeking to carry out the purpose of his employment, he oversteps the law, he outruns his authority, and his principal will not be bound by what he does (d).

When master
not liable for
illegal act of
servant.

Nor is a master responsible for injury caused by his servant's negligence *to a person who might*, by the exercise of *ordinary care*, have avoided the consequences of the servant's negligence (e). The law was thus stated by

Nor is person
injured *ought* to
use *ordinary*
care.

(2) *Wright v. Wilcox*, 19 Wendell's Rep. 343, following *M'Manus v. Crickett*, 1 East, 106. See *Hoffman v. New York Central, &c. Railroad Co.*, 41 Amer. Rep. 337, and reporter's note, p. 340. In that case the conductor kicked off the car a boy who was *stealing a ride*, and the company were held liable.

(a) *Grant v. Norway*, 10 C. B. 665; *Huddersly v. Ward*, 8 Exc. 330. See the remarks made in the House of Lords on *Grant v. Norway* in *Whitechurch v. Cavanagh*, 85 L. T. Rep. 349.

(b) *Coleman v. Riches*, 16 C. B. 105.

(c) *Pinchey v. Rowland*, 13 U. B. 182.

(d) *Per Cockburn, C. J.*, in *Wilson v. Rankin*, 34 L. J., Q. B. 62; affirmed L. R., 1 Q. B. 162; 35 L. J., Q. B. 87. See also *Earle v. Rowcroft*, 8 East, 133, 139.

(e) So, *e converso*, a master cannot recover against a third person for damage which has arisen through his own servant's negligence: *Pardington v. South*

Lord Penzance as being perfectly well settled and beyond dispute (*f*).

"The first proposition is a general one to this effect, that the plaintiff in an action for negligence cannot succeed if it is found by the jury that he has himself been guilty of any negligence or want of ordinary care which contributed to cause the accident. But there is another proposition equally well established and it is a qualification upon the first, namely, that though the plaintiff may have been guilty of negligence and although that negligence may in fact have contributed to the accident, yet if the defendant could in the result, by the exercise of ordinary care and diligence, have avoided the mischief which happened, the plaintiff's negligence will not excuse him."

Therefore, in an action (*g*) by a passenger in the train of one railway company against another company, with a train belonging to which a collision had taken place, whereby the plaintiff was injured, a plea by the defendants, that the injury was caused *in part* by the negligence of the persons who had the care of the train in which the plaintiff was riding, was held bad, as it was consistent with all the facts stated in it that the plaintiff, or those who had the charge of the train in which he was riding, could not by the exercise of ordinary care have avoided the consequences of the defendants' negligence. And Lord Wensleydale said,—

*Bridge v.
Grand Junction
Railway
Co.*

"The rule of law is laid down with perfect correctness in the case of *Butterfield v. Forrester* (*h*); and that rule is, that although there may have been negligence on the part of the plaintiff, yet, unless he might by the exercise of ordinary care have avoided the consequences of the defendant's negligence, he is entitled to recover: if by ordinary care he might have avoided them, he is the author of his own wrong."

The same principle was again acted upon in a case (*i*) in which a master was held liable for the negligence of

*Davies v.
Mann.*

Wales Railway Co., 1 H. & N. 392; *Ellis v. London and South Western Railway Co.*, 2 H. & N. 424.

(*f*) *Railley v. London and North Western Railway Co.*, 1 App. Cas. 754. As to the nature of the evidence to be given where contributory negligence is pleaded, see *Wakelin v. London and South Western Railway Co.*, 12 App. Cas. 41, and *Smith v. South Eastern Railway Co.*, (1896) 1 Q. B. 178, and cases there cited.

(*g*) *Bridge v. Grand Junction Railway Co.*, 3 M. & W. 244; acc. in *America*, *Center v. Finney*, 17 Barbom's Rep. 95.

(*h*) 11 East, 60.

(*i*) *Davies v. Mann*, 10 M. & W. 546; see also *Morrison v. General Steam Navigation Co.*, 8 Exc. 733; *Dowell v. Same Co.*, 5 E. & B. 195.

*Davies v.
Mann.*

his waggoner, who had driven over and killed the plaintiff's ass, which was wrongfully left fettered in the public road : for although the plaintiff was negligent in leaving his donkey there, yet the donkey's being there was not the *immediate* cause of the injury.

*Tuff v.
Warman.*

And in the case of *Tuff v. Warman* (j), in the Exchequer Chamber, Wightman, J., in delivering judgment, said :—

" The proper question for the jury in cases of this kind is, whether the damage was occasioned entirely by the negligence or improper conduct of the defendant, or whether the plaintiff himself so far contributed to the misfortune by his own negligence or want of ordinary and common care and caution, that but for such negligence or want of ordinary care and caution on his part the misfortune would not have happened. In the first case the plaintiff would be entitled to recover : in the latter, not, as but for his own misconduct the misfortune would not have happened. Mere negligence, or want of ordinary care or caution, would not, however, have disentitled him to recover unless it was such that but for the negligence and want of ordinary care and caution the misfortune would not have happened, or if the defendant might by the exercise of caution on his part have avoided the consequences of the neglect or carelessness of the plaintiff. This appears to be the result deducible from the opinion of the judges in the case of *Butterfield v. Forrester*, *Bridge v. The Grand Junction Railway Co.*, *Davies v. Mann*, and *Dowell v. The General Steam Navigation Co.*"

Identification
of passenger in
public convey-
ance with
driver

The principles of the law of contributory negligence were at one time extended in a way which was the subject of much adverse criticism. It was held (k) that a passenger in a public conveyance so far identified himself with the owner of the conveyance and his servants that in an action by him in respect of personal injuries alleged to have been caused by the negligence of a third person, the defendant was entitled to rely on any negligence on the part of the owner of the conveyance, or his servants, which contributed to the happening of the accident. In 1888 the point came up for the consideration of the House of Lords. A collision occurred between two steamships through the fault or default of the masters and crews of both. Two persons on board one of the ships, neither of whom had anything to do with the

(j) 5 C. B., N. S. 575.

(k) *Thorogood v. Bryan*, 8 C. B. 115; *Armstrong v. Lancashire and Yorkshire Railway Co.*, 4 L. R., 10 Exc. 47.

negligent navigation, were drowned. It was held (*l*), overruling the two cases just referred to, that the deceased persons were not so identified in respect of negligence with those navigating the ship that they had been on, as to disentitle their representatives from recovering in an action against the owners of the other ship.

In that case, as in the two decisions which it overruled, the injured persons were adults, and on that ground there may be a distinction between those cases and cases where the injured person is an infant. As where the plaintiff, a child of five years old, being on a railway in the care of his grandmother, was knocked down and injured by a train of the defendants. The accident was partly due to the defendants' negligence and partly to the negligence of the grandmother, and it was held by the Court of Queen's Bench and affirmed by the Exchequer Chamber, that the plaintiff was so far identified with his grandmother that her contributory negligence prevented his recovering any damages from the defendants (*m*).

In the case of an infant.

A child or person under age may, according to the circumstances of a case, be guilty of contributory negligence. Where the party injured was a child incapable of taking care of itself, and was not under the care of any one who was capable of taking care of it, a master has been held liable for injury caused to the child by the negligence of his servant, although the child itself, by its own act, brought about the accident. Thus, where (*n*) a carman, who had charge of a cart, went into a house and left the horse and cart standing at the door,

Where person injured is incapable of taking care.

Lynch v. Nardin.

(*l*) *Mills v. Armstrong*; *The Bernina*, 13 App. Cas. 1.

(*m*) *Waite v. North Eastern Railway Co.*, E. B. & E. 719.

(*n*) *Lynch v. Nardin*, 1 Q. B. 29; *Lay v. Midland Railway Co.*, 34 L. T. Rep. 30. But see *Lygo v. Newbold*, 9 Exc. 302. In *Abbott v. M'Fie*, 2 H. & C. 744, a child was held guilty of contributory negligence so as to exempt the defendant from liability. See also *Mangan v. Atherton*, 4 H. & C. 388; which, however, was adversely commented on in *Clark v. Chambers*, 3 Q. B. D. 327. *Crocker v. Banks*, 4 Times L. Rep. 324, was an action by a girl of seventeen who was injured while working at a dangerous machine for the defendants, through having omitted to put on a mask provided for her. The Court held it was not negligence "for a girl of her age" to have omitted to put on the mask on the occasion when the accident happened.

*Lynch v.
Nurdin.*

without any one to take care of them, for about half an hour, and during his absence a child, under seven years of age, got upon it, and another boy led the horse on, whereby the child was thrown down, run over, and his leg broken; it was held that the carman's master was liable for the damages sustained by the child, although the child was a trespasser and contributed to the mischief by his own act; the jury having found that he merely indulged the natural instinct of a child in amusing himself with the empty cart and deserted horse.

Who is the
master of the
servant doing
the damage?

The difficulty, however, which arises in cases of this sort is not so much in ascertaining the law as in applying it to the circumstances of each particular case, and ascertaining *who is* to be regarded as *the master* in each case, for it is obvious that the liability arising from the relationship of master and servant cannot exist unless the relationship itself exist (*o*). In all cases, therefore, of injury by the act of a servant, it is most important to ascertain in the first place whose servant the person was who caused the injury (*p*). And the answer to that depends upon the question, who had the right of control over the servant at the time when he did the act which caused the injury (*q*). Where a master has entered into

(*o*) *Baumvroll Manufactur Von Scheibler v. Furness*, (1893) A. C. 8. One of the contentions that were overruled in this case was, that under the Merchant Shipping Act, 1876, the registered managing owner of a ship must be liable for the negligence of the master of the ship, although by charter-party he had parted with the whole possession and control of the vessel. An Act of Parliament may have the effect of making a person responsible for the acts of another, although the two persons do not stand to each other in the relation of master and servant; as in the case of Metropolitan cab proprietors and cab drivers. See *Keen v. Henry*, (1891) 1 Q. B. 292, and other cases, cited *ante*, p. 288, n. (*k*).

(*p*) In these cases the law does not recognize a several liability in two principals who are unconnected. Two persons may be jointly liable as masters, but not separately. So that if they are unconnected, it follows that if one is liable, the other is not. *Laugher v. Painter*, 5 B. & C. 517; *Reedie v. London and North Western Railway Co.*, 4 Ex. 244.

(*q*) *Demoran v. Laving Wharfton and Down Construction Syndicate*, (1893) 1 Q. B. 629. That was an action against the owners of a crane who had lent it, with a man to work it, to a wharfinger. Bowen, L. J., said: "We have only to consider in whose employment the man was at the time when the acts complained of were done, in this sense, that by the employer is meant the person who has a right at the moment to control the doing of the act. That was the test laid down by Crompton, J., nearly forty years ago, in

a written contract for letting out his servant for a particular occasion, the terms of the contract (*r*) as construed by the Court, will often show whether it was the general master or the hirer of the servant who had such a right of control over the servant during the time for which his services were hired as to make him liable for the negligence of the servant in the course of the employment. If there is no written contract, the nature of the work to be done will probably afford evidence from which an inference may be drawn, which of the two, the general master or the hirer, had the right of control (*s*).

The letting out of carriages and drivers has supplied some of the chief instances in which this question of the right of control has arisen. For instance, in the ordinary case of a person hiring a carriage, horses and driver (*t*), on a job, although it is now settled that, if in such a case

Coachman,
with carriage
or horses on
job, not
servant of
hirer.

Sadler v. Henlock (4 E. & B. 570), in the form of the question, "Did the defendants retain the power of controlling the work?" Some of the cases in which the doctrine of common employment is relied upon depend on this question; as where the servant of A., by submitting himself to the control and orders of B., may become *pro hac vice* the servant of B., so as to disable him from recovering from B. for injuries sustained through the fault of B.'s proper servants. See *Johnson v. Lindsay & Co.*, (1891) A. C. 371; *Turner v. Great Eastern Railway Co.*, 33 L. T., N. S. 431. It is on the ground of want of power of control that an employer of an independent contractor is in general not liable for the acts of such a contractor and his servants. But the control which an agent exercises on behalf of his principal over the servants employed by his principal will not necessarily make him responsible for the acts of the servants: *Stow v. Cartwright*, 6 T. R. 411 (agent of colliery not liable for damage caused by colliers); *Kinsella v. Hamilton*, 26 L. R., Ir. 671 (land agent directing a distress to be made on behalf of landlord, not master of bailiff).

(*r*) *Waldock v. Winfield*, (1901) 2 K. B. 596; *Abrahams v. Bullock*, 85 L. T. Rep. 237.

(*s*) Other matters may raise a *prima facie* presumption of control in cases where there is no direct evidence: e.g., in *Stables v. Eley*, 1 C. & P. 614, the defendant was held responsible for the negligent driving of a carter on the ground that his name was on the cart; but see the comments on this case in *Smith v. Bailey*, (1891) 2 Q. B. 403. So, too, the fact of the defendant being registered owner of a ship may be *prima facie* evidence from which a jury may infer that he was the employer of a man in charge of the ship while lying in a dock: *Hibbs v. Ross*, L. R., 1 Q. B. 534. See *per Lopes, L. J.*, in *Baumroll Manufactur Von Scheibler v. Gilchrist*, (1892) 1 Q. B. 253. And the selection of a servant by the defendants, and payment of his wages by them would also be circumstances which, if nothing else intervened, would be strong to show that he was their servant. See Lord Esher, M. R., in *Donovan v. Laing Wharton and Down Construction Syndicate*, (1893) 1 Q. B. 629.

(*t*) If the horses are driven by the servant of the hirer he would be liable: *Sammell v. Wright*, 5 Esp. 263.

*Laugher v.
Pointer.*

any accident or injury happen to a third person through the carelessness or misconduct of the driver, the hirer is not, in general (*u*), liable to make compensation for such injury, yet there was formerly considerable doubt upon the subject, and some of the judges expressed opinions that the hirer *was* responsible, as being the *dominus pro tempore* (*v*): and he certainly is, in some respects, the master, for he may order the carriage to be driven where he pleases. The question was argued at great length in *Laugher v. Pointer* (*w*), where the owner of a carriage hired for the day, of a livery-stable keeper, a pair of horses and a driver, through whose negligence an injury was done to the plaintiff's horse; and the question was, whether the owner of the carriage, or the livery-stable keeper who supplied the horses and driver, was liable to make compensation for the injury. The judges before whom the case was argued, differing in opinion, they all gave separate and very elaborate judgments, which, as observed by Mr. Justice Story, in his valuable work on Agency (*x*), "have exhausted the whole prior learning on the subject, and on that account should be attentively studied." The Lord Chief Justice, afterwards Lord Tenterden, and Mr. Justice Littledale, holding that the owner of the carriage was not liable; and Bayley and Holroyd, JJ., holding that he was. The point was thus left unsettled, for not only the Court of Queen's Bench but the twelve judges differed upon it (*y*). It again arose,

(*u*) The hirer *may* make himself liable by ordering, sanctioning, or adopting the act of the driver. *M'Laughlin v. Papp*, 4 M. & G. 48, *post*, p. 332; *Burgess v. Gray*, 1 C. B. 578, *post*, p. 321.

(*v*) See *per* Heath, J., in *Bush v. Stearnman*, 1 B. & P. 409. Where A. hired B.'s servant to thatch for him, with B.'s assent, B. was held liable for *negligence* of the servant. But *semble*, he was not for *incompetence*: *Holmes v. Quinn*, 2 C. B., N. S. 796.

(*w*) 5 B. & C. 517. And see *Chadot v. Brumby*, 12 Ves. 114, where Sir W. Grant held that a job coachman supplied with carriage and horses was not a servant of the person to whom they were supplied, although he paid the coachman board wages, as the contract was with the job-master, and the coachman was a *subject* of the contract, not a *party* to it.

(*x*) Sect. 153 b.

(*y*) See *per* Lord Wensleydale, in *Quarman v. Barnett*, 6 M. & W. 507. In *Brady v. Giles*, 1 M. & Rob. 494, where a similar question arose in an action on the case, Lord Abinger, C. B., left it to *the jury* to say whether the

and was definitely settled in *Quarman v. Burnett* (z), in which the Court of Exchequer, after fully considering the judgments given in *Laugher v. Pointer*, thought the weight of authority and legal principle was in favour of the view taken by Lord Tenterden and Mr. Justice Littledale, and decided accordingly, that the hirer was *not* liable. And it was also held, that the facts that the hirer always had the same driver, who was the only one his master kept, and always gave him a fixed gratuity and provided him with a livery, which he kept in the hirer's hall, and while he was hanging up which the accident happened, made no difference in the hirer's liability.

*Quarman v.
Burnett.*

The decision in *Quarman v. Burnett* was followed (a) in a case where the plaintiff had been injured by the negligent driving of a water cart which was being used for watering the streets of Liverpool. The action was brought against the Corporation of Liverpool, who had made arrangements with a contractor to supply the driver and horse for their watering carts. It appeared that the driver was paid by the contractor, and was not under the control of the corporation otherwise than that their inspector told him what streets to water, and on this ground the corporation were held not to be liable for the driver's negligence.

*Jones v.
Liverpool
Corporation.*

postillions were acting as the servants of the owner of the chaise, or of the hirer, and said it always appeared to him that the Queen's Bench pursued an erroneous course in *Laugher v. Pointer*, when they allowed the question to be discussed as a question of law. And see *M'Loughlin v. Pryor*, 4 M. & G. 48, *post*, p. 332.

(z) 6 M. & W. 499. And see *Fenton v. City of Dublin Steam Packet Co.*, 8 A. & E. 835, where the owner of a ship, who let it by charter-party, whereby he agreed to find seamen, was held liable for their negligence; and *Dean v. Hogg*, 10 Bing. 345; *Dalyell v. Tyrer*, 28 L. J., Q. B. 52. In *Res v. Haydon*, 7 C. & P. 445, it was held that the driver of a glass-coach, having stolen a purse from the hirer, could not be convicted of larceny *as a servant*, so as to be liable to the punishment for the aggravated offence under 7 & 8 Geo. 4, c. 29, s. 46, but was guilty of simple larceny only.

(a) *Jones v. Corporation of Liverpool*, 14 Q. B. D. 390. The dictum of Grove, J., in this case that the liability would have been different if the servant had not been lent for reward was disapproved of by the Court of Appeal in *Donovan v. Laing Wharton and Down Construction Syndicate*, (1893) 1 Q. B. 629.

Jones v.
Scullard.

But where (*b*) the owner of a carriage, horses and harness, was supplied with a driver by a livery stable keeper, and provided his own livery for the driver who had driven for him continuously for six weeks, it was held that there was evidence for the jury that on the occasion when the accident happened to the plaintiff, which was the cause of the action, the driver was acting as the servant, not of the livery-stable keeper, but of the owner of the carriage.

Roache v.
White Moss
Colliery Co.

And so where (*c*) colliery owners agreed with a contractor that he should sink a shaft for them, and that they should provide him with an engine and an engineer (whom they employed and paid) to work it, it was held that they were not liable for the engineer's negligence whereby the plaintiff was injured because, though the engineer was their general servant, yet being under the orders and control of the contractor at the time of the accident, he was acting, not as their servant, but as the contractor's servant.

Independent
contractor not
a servant so as
to make his
employer
liable for his
negligence.

And as ever since *Quarman v. Burnett* it has been considered settled law that one employing another is not liable for his collateral (*d*) negligence unless the relation of master and servant existed between them, a person employing a contractor to do work is

b *Jones v. Scullard*, [1898] 2 Q. B. 565.

c *Roache v. White Moss Colliery Co.*, 2 C. P. D. 205; followed in *Dowdall v. Laving Wharfton and Thwa Construction Syndicate*, (1893) 1 Q. B. 629, where the owners of a crane who had lent it, with a craniman, to a wharfinger, were held to be not responsible for the negligence of the craniman while under the control of the wharfinger. In *Carrus v. Clyde Navigation Trustees*, 25 Ct. Sess. Cas. Fourth Ser. 1021, the defendants under somewhat similar circumstances were held not to have parted with the control of a craniman whom, with a crane, they had lent to a stevedore for the purpose of unloading a ship, and on this ground were held liable for the craniman's negligence.

d Sometimes called "casual" negligence: *Pickard v. Smith*, 10 C. B., N. S. 470. In *Hardaker v. Idle District Council*, (1896) 1 Q. B. 335, Lindley, L. J., refers as an instance of casual negligence to *Reedie v. London and North Western Railway Co.*, 4 Ex. 244, where the defendants employed a contractor to build a bridge, and one of the contractor's workmen carelessly let a stone fall on the plaintiff, and the defendants were held not liable. See *Pearson v. Cox*, 2 C. P. D. 369. See also as to the meaning of casual or collateral negligence the judgment of Smith, L. J., in *Pratt v. Wembley Urban District Council*, (1899) 2 Q. B. 72.

not liable for the negligence of that contractor or his servants (*e*).

So the owner of a ship who employed a master stevedore (*f*) to execute the work of unloading the vessel was held not liable for the negligence of a man employed by the stevedore, though the man, being one of the crew, was the defendant's general servant. The owner exercised no control over the work, but left it all to the stevedore, who did not, in any sense, act as the owner's servant.

A labourer, particularly skilful in making drains, who was employed to cleanse a drain for the defendant, who paid him five shillings for the job, was held not to be a contractor, and the defendant was held liable for injuries caused through the labourer's negligence (*g*).

And an attorney has been held not to be a contractor in this sense, and therefore his client was held liable to an action of trespass when a *ca. sa.* was set aside (*h*).

Thus, too, where a butcher bought a bullock in Smithfield Market, and employed a licensed drover to drive it home, and the drover employed a boy, through whose negligence the bullock injured the plaintiff's property; it was held, that the butcher was not liable, as the drover exercised a distinct calling, and the boy who

Butcher
employing
Smithfield
drover.

Milligan v.
Wedge.

(*e*) Lord Blackburn in *Dalton v. Angus*, 6 App. Cas. 740. This general statement is subject to other principles of law; see, *post*, p. 320.

(*f*) *Murray v. Currie*, L. R., 6 C. P. 24. In questions arising between a shipowner and charterer a stevedore may sometimes under the charter-party be considered the owner's servant: *Sack v. Ford*, 32 L. J., C. P. 12; 13 C. B., N. S. 90; *Harris v. Best*, 68 L. T. Rep. 76. But the master of a general ship has been held not liable to the owner of goods for the damage done to them by the careless stowage of a stevedore appointed by the charterer, but paid by and to act under the captain's orders, the stevedore not being the servant of the master; though the master might make himself liable for the stevedore's acts by interfering: *Blaikie v. Stenbridge*, 6 C. B., N. S. 894.

(*g*) *Sadler v. Henlock*, 4 E. & B. 570. As to how far a landlord is liable for the acts of men sent in to repair a well, see *Mills v. Holton*, 2 H. & N. 14. In *Serendat v. Saisse*, L. R., 1 P. C. 152, the defendant employed two bands of Indians to clear his ground of weeds and brushwood. By their negligence a fire kindled by them spread to the plaintiff's land and burnt his house. It was proved in evidence that the defendant interfered with the work, and directed the Indians as to the mode in which it was to be performed, and he was accordingly held responsible for their negligence.

(*h*) *Collett v. Foster*, 2 H. & N. 356; see *Freeman v. Rosher*, 13 Q. B. 780.

*Rapson v.
Collett*

caused the mischief was *his* servant, not the servant of the butcher (i). And so where a builder was employed to make certain alterations at a club-house, including the preparation and fixing of certain gas-fittings, to do which he made a sub-contract with a gas-fitter, through the negligence of whom, or his servants, the gas exploded and injured the plaintiff (j), the builder was held not liable, as the relation of master and servant did not exist between him and the party causing the injury (k).

Employer's
right to inspect
works, etc.,
does not make
a contractor
his servant.

But though it is the employer's power of control that differentiates the position of servant from that of independent contractor, the employer may nevertheless reserve to himself by contract general rights of watching the progress of the works which the contractor has agreed to carry out for him, of deciding as to the quality of materials and workmanship, of stopping the works or any part thereof at any stage, and modifying and altering them, and of dismissing disobedient or incompetent workmen employed by the contractor, and yet he will not thereby render himself liable to third persons for the negligence of the contractor in carrying out the works (l).

(i) *Mulligan v. Wedge*, 12 A. & E. 737. In this case, Littledale, J., stated that he retained the opinion he had expressed in *Laugher v. Painter*. See *Martin v. Temperley*, 4 Q. B. 298. And see *R. v. Hey*, 2 Carr. & K. 983, where it was held that a drover was a bailee, and not a mere servant of the person who employed him, and therefore, that having sold some pigs intrusted to him and absconded with the money, he could not be convicted of larceny. He had no *original* intention of stealing the pigs.

(j) In such a case the gas-fitter is liable to the person injured: *Perry v. South*, 4 C. P. D. 325.

(k) *Rapson v. Collett*, 9 M. & W. 710. See *Gayford v. Nicholls*, 9 Exc. 702; *Cuthbertson v. Parsons*, 12 C. B. 301. In *McKeon v. Bolton*, 1 Ir. C. L. Rep. 577, a person employed to remove dust was held to be a servant, and not a contractor, and the employer was held liable for an accident caused by a heap left in the street. *Randleson v. Murrey*, 8 A. & E. 109, was a case in which the question simply was whether there was evidence to go to the jury that the men whose negligence was complained of were the servants of the defendant or whether the master porter who brought them was an independent contractor. In *Blake v. Woolf*, 1898, 2 Q. B. 426, the defendant was held not to be liable for the negligence of a skilled plumber whom he called in to mend a leaky cistern.

(l) *Reich v. London and North Western Railway Co.*, 4 Exc. 244; *Steel v. South Eastern Railway Co.*, 16 C. B. 550; *Hardaker v. Idle District Council*, (1896) 1 Q. B. 335. See also *Glover v. London and North Western Railway Co.*, 5 Exc. 66. In *Croft v. Thomas*, 63 L. T. 756, the

So again, commissioners of a navigation, who had entered into a contract with a person to do certain works, were held not liable for an injury arising from the imperfect performance of part of those works, as the contractor was not their servant (*m*). *Allen v. Hayward.*

So in another case (*n*), where a railway company entered into a contract with A. to construct a portion of their line. A. contracted with B., who resided in the country, to erect a bridge on the line. B. had in his employment C., who acted as his general servant and as a surveyor, and had the management of B.'s business in London, for which he received an annual salary. B. entered into a contract with C., by which C. agreed for 40*l.* to erect a scaffold, which had become necessary in building the bridge; but it was agreed that B. was to provide the requisite materials, and lamps, and other lights. The scaffold was erected upon the footway by C.'s workmen, and a portion of it improperly projected, and owing to that and the want of sufficient light, D. fell over it at night and was injured; but it was held that D. could not maintain an action against B. for the injury thus occasioned; even though, *after the accident*, B. had caused other lights to be placed near the spot to prevent a recurrence of similar accidents. *Knight v. Fox.*

Again, where certain commissioners (*o*) had contracted with A. for all the paving required in a certain district, and A. contracted with B. to lay down a certain portion of it, and B.'s workmen left some paving stones at night in such a position as to constitute a public nuisance, *Overton v. Freeman.*

power of the trustees and managers of a parish school to appoint and dismiss a teacher was held not to make her their servant, so as to render them liable for her negligence while engaged in teaching, as they had no control over her so as to be able to direct her what to do or what not to do in the daily management of the school.

(*m*) *Allen v. Hayward*, 7 Q. B. 960; see *Clayards v. Dethick*, 12 Q. B. 439; and the American cases of *Lowell v. Boston and Lowell Railroad Corporation*, 23 Pick. 24; *Stone v. Cheshire Railroad Corporation*, 19 New Hamps. Rep. 427; *Blake v. Ferris*, 1 Seld. 49, 62 (1851); *Hilliard v. Richardson*, 3 Gray. 349 (1855), in the last of which are two elaborate judgments. *Kelly v. Mayor of New York*, 1 Kernan, 482 (1854).

(*n*) *Knight v. Fox*, 5 Exc. 721.

(*o*) *Overton v. Freeman*, 11 C. B. 567.

*Overton v.
Freeman.*

and the plaintiff tumbled over them whilst on foot; it was held, that A. was not liable to an action at the suit of the plaintiff, as the injury was not caused by *his* workmen.

Liability of
tow for negli-
gence of tug.

No general rule can be laid down as to the liability of a vessel in tow for a collision between it and a third vessel occasioned by the negligence of those on board the tug. Whether the relation of master and servant exists between the owners of the vessel in tow and the crew of the tug, so as to make the former liable, depends on the circumstances in each case (*p*).

Liability of
British master
for acts of ser-
vant abroad.

It would seem that, according to the law of Spain, where a servant commits a wrongful act, the wrong is not imputed to the master, and therefore where a British ship damaged a pier in Spain, it was held that the owners could not be rendered liable by the application of the principles of English law: James, L. J., observing, "If I take my servant abroad with me to drive my carriage I do not take the maxim *respondet superior* with me" (*q*).

When em-
ployer is liable
for acts of
contractor.

The general rule being that a person employing an independent contractor is not liable for the negligence of that contractor or his servants, reference may now be made to cases in which the negligence of such a contractor or his servants will impose a liability on his employer.

Unlawfulness
of act con-
tracted to be
done.

In the first place if the act contracted to be done be in itself unlawful, the employer will not escape liability by agreeing with some one to do it for him. As where the defendants, without having any power or authority to break up streets, employed contractors to do it for the purpose of laying down gaspipes, and the plaintiff fell over a heap of stones left by the contractors and hurt herself, the defendants were held liable (*r*).

p *The Quicksip*, 15 P. D. 196, and see *The Englishman and the Australian*, 1894 P. 239. Where there was a pilot on board the tow, and the tug collided with another vessel, the tug was held liable; *The Mary*, 5 P. Div. 11; and the tow also in *The Sanguana*, 5 P. Div. 211. See the American case of *Spraul v. Hemmingway*, 14 Pick. 71.

q *The Mosham*, 1 P. Div. 107.

r *Fell v. Sheffield Gas Co.*, 2 E. & B. 767. See *Sadler v. Henlock*, 4 E. & B. 570; *Blake v. Thrust*, 32 L. J., Exc. 188. In *Pickard v. Smith*, 10

Again, the employer may, by personal interference with the workmen, adopt their acts and so render himself liable where, ordinarily, he would not be so. As in the case of *Burgess v. Gray* (s), in which it appeared that the defendant was the proprietor of some newly-built houses which he had employed P. to build for him, and P. in forming a drain from premises belonging to the defendant at the back of the new houses to the common sewer, had, by his servants, caused a quantity of gravel to be deposited by the roadside. The drain being finished, P. employed a person to carry away the gravel, and paid him so much a load, which he charged to the defendant, but the person so employed left some on the road, and the plaintiff, whilst driving along the road in the evening, ran upon the gravel left in the road, was upset and was injured. The defendant's attention had been called to the gravel left in the road by a policeman, and he had promised to remove it as soon as he could, and after the accident had said it was caused by the plaintiff's carelessness. On the part of the defendant, it was, amongst other things, contended, on the principle of *Quarman v. Burnett*, that he was not liable, as he had employed a contractor; but it was nevertheless held that, under the circumstances of the case, he was liable.

Liability of employer for personal interference.

In that case no precise contract for the work was proved, nor was it shown that P. was employed to do the work personally, the mode of doing it being left to his judgment and discretion. And in the absence of evidence to show that the defendant had parted with all control and authority in the matter, "it must be assumed," said

C. B., N. S. 470, it is said that the rule as to the non-liability of an employer for the acts of an independent contractor is inapplicable to cases "in which the act which occasions the injury is one which the contractor was employed to do."

(s) 1 C. B. 578. The defendant in this case was held liable partly on the ground that it did not appear that he had parted with the whole control of the work, and partly on the ground that he had sanctioned and adopted the act of the person who placed the gravel in the road. It is on the latter account that it is cited in the text. See, however, *Knight v. Fox*, 5 Ex. 721, *ante*, and see also the cases of trespass, *post*.

Cresswell, J., "that he adopted all that was done by P. in carrying on the work."

Legal duties
of employer to
third persons.

And again, an employer cannot, by employing a contractor, get rid of his own duties towards other people, whatever those duties may be. In a case already referred to (t), Lord Blackburn used these words :—

"Ever since *Quarman v. Burnett*, it has been considered settled law that one employing another is not liable for his collateral negligence, unless the relation of master and servant existed between them. So that a person employing a contractor to do work is not liable for the negligence of that contractor or his servants. On the other hand, a person causing something to be done, the doing of which casts on him a duty, cannot escape from the responsibility attaching on him of seeing that duty performed by delegating it to a contractor. He may bargain with the contractor that he shall perform the duty, and stipulate for an indemnity from him if it is not performed, but he cannot thereby relieve himself from liability to those injured by the failure to perform it."

Statutory
duty.

A duty on the employer which he cannot get rid of by contracting for its performance by someone else may be one imposed directly by statute. As where (u) a statute imposed on the defendants the duty of building a bridge which would open to let vessels pass, and they employed a contractor who built a bridge that would not open as the statute required, whereby the plaintiff was injured, the defendants were held liable. So, too, where a statute authorized the owner of a house to make a cutting in a road for the purpose of making a drain and by a subsequent section imposed on him the duty of filling up the cutting properly, and he employed a contractor to make the drain, whose workmen neglected to fill up the cutting properly, the owner of the house was held liable (v).

Duties to
persons using
highways.

Other instances of duties from which an employer of a contractor cannot free himself are those which he owes to

(t) *Dutton v. Angus*, 6 App. Cas. 740, 829.

(u) *Hole v. Sittingbourne and Sheerness Railway Co.*, 6 H. & N. 488.

(v) *Gray v. Pullen*, 5 B. & S. 970. In *West Riding and Grimsby Railway Co. v. Wakefield Local Board*, 33 L. J., M. C. 171, a statutory duty was imposed on a railway company of making good all damage done to a road which they might "use or interfere with" in making a railway, and they were therefore held liable for damage done by the contractor whom they employed.

persons lawfully passing along a highway, or a place which may be, and to his knowledge probably will be used by persons lawfully entitled so to do (*w*).

Thus (*x*) the occupier of the refreshment room at a railway station was held liable for an injury caused by the trap of his coal-cellar being negligently left open by the servants of the coal-merchant who had been delivering coal there.

So a person maintaining a lamp projecting over a highway for his own purposes is bound to maintain it so as not to be dangerous to passengers, and if it causes injury owing to want of repair it is no answer on his part that he employed a competent person to put it in a safe state of repair (*y*).

And a person interfering, though under statutory authority, with a highway, is under the duty of taking care that what is being done on the highway shall offer no dangerous obstruction to the public. A district council (*z*) employed a contractor to make up a road, and in carrying out the work, he negligently left on the road a heap of soil unlighted and unprotected. A person walking along the road after dark fell over the heap and was injured, and it was held that the council was liable because, from the nature of the work which they had employed the contractor to do, danger was likely to arise to the public using the road. So, too, it was held (*a*) that a district council in making a sewer under a road were bound to

(*w*) Under the Tramways Act, 1870 (33 & 34 Vict. c. 78), a tramway company can by contract with the road authority relieve itself from liability for injuries from non-repair of that portion of the road which otherwise they would be liable to repair: *Aldred v. West Metropolitan Trans. Co.*, (1891) 2 Q. B. 398.

(*x*) *Pickard v. Smith*, 10 C. B., N. S. 470. In *Whiteley v. Pepper*, 2 Q. B. D. 276, the coal-merchant was held liable.

(*y*) *Tarry v. Ashton*, 1 Q. B. D. 314.

(*z*) *Penny v. Wimbledon Urban Council*, (1899) 2 Q. B. 72, followed in *Hill v. Tottenham Urban Council*, 79 L. T. Rep. 495; and in *The Snark*, (1900) P. 105, where the defendants' barge was sunk in the Thames and the contractor employed by them to raise the barge negligently allowed the guard vessel placed to mark the submerged barge to swing out of position, so that the plaintiff's ship ran on the wreck and was damaged.

(*a*) *Hardaker v. Idle District Council*, (1896) 1 Q. B. 335.

take proper precautions against doing injury to any gas pipes which they might come across while excavating, and therefore were held liable for damages resulting from an escape of gas from a pipe which the contractor, whom the council employed to make the sewer, had negligently omitted to keep properly supported during the excavations, so that it broke and the gas escaped.

In another case (*b*) a company was laying telephone wires underneath the pavement of a street and contracted with a plumber to solder the joints of the pipes in which the wires were laid. To do this the soldering material was melted in an iron pot used on the pavement, and in accordance with a common and proper practice a benzoline lamp was dipped into the molten metal for the purpose of getting a flare. In consequence of the negligent way in which this was done, an explosion ensued and the plaintiff, who was passing along the highway, was injured. The district council was held liable, as they were bound to take care that the public using the highway were protected against any act of negligence by a person acting for them in the execution of the works.

Duties arising out of dangerous nature of works to be executed by the contractor.

Those were cases in which the person injured was lawfully using a public highway, but the two following cases show how difficult it is for a person who contracts for the execution of any works of a kind likely to cause injury to his neighbour, to avoid liability for their careless execution.

In *Hughes v. Percival* (*c*) the defendant employed a contractor to take down his house and rebuild it. In doing this the contractor negligently cut into the party-wall between the defendant's house and the adjoining house of

(*b*) *Holliday v. National Telephone Co.*, (1899) 2 Q. B. 392.

(*c*) *Hughes v. Percival*, 8 App. Cas. 443, overruling *Butler v. Hunter*, 7 H. & N. 826. See also the following cases, where the plaintiff had a right of support to his land or to his buildings, and the defendant was held liable for the acts of his contractor by which the plaintiff's right was interfered with: *Le Maitre v. Dicks*, 19 Ch. D. 281; *Bower v. Peate*, 1 Q. B. D. 321; *Dutton v. Angus*, 6 App. Cas. 749.

B., and this caused the defendant's house to fall and do damage to the plaintiff's house. There was no question whether the plaintiff had any right of support from the defendant's house. It was held that the defendant was liable, upon the ground that the work ordered by him was necessarily attended with risk to the plaintiff's house, and that it was therefore the defendant's duty to see that proper precautions were taken to prevent injury to that house.

In a subsequent case (*d*) the defendants, who were land-owners, contracted with a man to fell and to burn the bush on their property, and they made certain stipulations as to the time when the burning was to take place. The contractor disregarded these stipulations and negligently made a fire which spread to the plaintiff's land and injured his buildings and crops. The Privy Council held the defendants liable for the negligence of their contractor, and Lord Shand, who delivered the judgment, after saying that the lighting of a fire on open bush land is an operation necessarily attended with great danger, and that a proprietor who executes such an operation is bound to use all reasonable precautions to prevent the fire extending to his neighbour's property, said that if the proprietor "authorizes another to act for him he is bound, not only to stipulate that such precautions shall be taken, but also to see that these are observed, otherwise he will be responsible for the consequences."

This liability of the master for the act of his servant, however, presupposes and is founded upon some obligation binding upon the master, either by contract or otherwise, to do or abstain from doing the act, the not doing or doing of which is complained of. A master cannot be liable for his servant omitting to do an act unless he himself was bound to do it. Nor again, can a master be liable for his servant doing an act which he himself was at liberty to

Master not
liable for
servant's act
when he would
not be liable if
he did it him-
self.

(*d*) *Black v. Christchurch Finance Co.*, (1894) A. C. 48.

perform, except, of course, in the case of a trust or licence personal to the master.

*Finnegan v.
Small.*

Where the plaintiff, who was an officer in the army, being about to leave London, sent his trunk to the house of the defendant (who was an upholsterer) for safe custody, and agreed to pay one shilling per week for house-room, and when the plaintiff returned he received the trunk, but the whole of the contents had been taken out and stolen, and the plaintiff brought an action against the defendant, charging him as bailee; Lord Kenyon held that the action could not be supported when it appeared that he had taken as much care of the plaintiff's goods as he had of his own, and said, "To support an action of this nature positive negligence must be proved. It has appeared in evidence in this case that the goods were lodged in a place of security, and where things of much greater value were kept. This is all that it is incumbent on the defendant to do; and if such goods are stolen by the defendant's own servants that is not a species of negligence of a description sufficient to support this action, inasmuch as he has taken as much care of them as of his own" (e).

*Giblin v.
M'Mullen.*

Where a customer deposited with his bankers for safe keeping certain securities which were stolen by a clerk of the bankers, it was held by the Privy Council that the bankers, as gratuitous bailees, were not liable unless the loss was occasioned by their gross negligence (f), and that under the circumstances there was no evidence of negligence (g).

*Holder v.
Soulby.*

So a lodging-house keeper, in the absence of any misfeasance by him, is not responsible for a loss through the dishonesty of his servants (h); since a lodger must

e *Finnegan v. Small*, 1 Esp. 315.

f As to this, see *Re United Service Co., Johnston's claim*, 6 Ch. App. 212; where the bankers were bailees for reward, and were guilty of negligence.

g) *Giblin v. M'Mullen*, L. R., 2 P. C. 317. See *Foster v. Essex Bank*, 17 Mass. Rep. 479.

h) *Holder v. Soulby*, 8 C. B., N. S. 251. In *Dansey v. Richardson*, 3 E. & B. 144, the Court of Queen's Bench had been equally divided on this point. See *Culpe's case*, 8 Rep. 22; 1 Smith's L. C. 115.

take care of his own goods in lodgings, as he must with respect to valuables about his person when he walks the street.

A trustee who, without being guilty of negligence, gives to his servant the custody of trust property, is not liable for loss occasioned to the trust estate by the felonious acts of the servant (*i*).

In an action by the owners of a carriage and horses, who had let them out on hire to the defendant, for damages done to them by the negligent driving of the defendant's servant, a Divisional Court consisting of Cave and Charles, JJ., held that the defendant was answerable for the return of the carriage and horses to the plaintiff in the condition in which he received them, fair wear and tear and certain accidents excepted (*l*).

But where A. entrusted B. (a chronometer maker) with a chronometer to be repaired, and B. suffered his servant to sleep in the shop in which the chronometer was deposited, and B.'s servant stole it, and it appeared that B. at the time when the theft was committed had deposited his own watches in a more secure place, B. was held liable to A. for its value (*l*).

Clarke v. Earnshaw.

An exception from the rules by which masters are responsible for the acts of their servants is to be found in those cases where they have been obliged by Act of Parliament to employ particular persons. It would be manifestly unjust to render a master responsible for the acts of a servant to whom he is forced by statute to commit the management of his property, and over whom he has no control.

Master not liable for person whom he is compelled by law to employ.

Thus though, in ordinary cases, a pilot is the servant of his employers, so that they are liable for his acts and negligence (*m*), their liability is different in cases where

Compulsory pilots.

(*i*) *Jobson v. Palmer*, (1893) 1 Ch. 71. In this case Romer, J., was of opinion that the liability of the trustee was not affected by the fact of his being remunerated for his services.

(*k*) *Coupe Co. v. Maddick*, (1891) 2 Q. B. 413.

(*l*) *Clarke v. Earnshaw*, 1 Gow, 30.

(*m*) *The Maria*, 1 W. Rob. 95, 108; *The Lion*, L. R., 2 P. C. 525.

by law they are compelled to employ a pilot (*n*). The Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), in re-affirmance of pre-existing law, provides thus:—

Seet. 633. An owner or master of a ship shall not be answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of that ship within any district where the employment of a qualified pilot is compulsory by law (*o*).

In order to exempt himself, by virtue of the provisions of the statute, from that which is a general common law liability, the employer of the pilot must show that a qualified pilot was acting in charge of the ship, that that charge was compulsory, and that it was the pilot's fault or incapacity which occasioned the damage: for he will not be exempt from liability if other causes, for which he is responsible, such as negligence on the part of the master or crew, contributed to the loss (*p*).

Where a pilot has been engaged in a district where pilotage is compulsory to take a ship to a certain point, and an accident happens through his fault in a place outside the district where the pilotage was compulsory, the shipowner may not be liable (*q*).

It may be convenient to mention in this place that a

Owner not
liable for

[*n*] See also the Harbour Clauses Act, 1847 (10 & 11 Vict. c. 27), sect. 71 of which makes the owners of vessels answerable for damage to works by any vessel, or by any person employed about the same, &c., but contains a proviso, "that nothing herein contained shall extend to impose any liability for any such damage upon the owner of any vessel where such vessel shall, at the time when such damage is caused, be in charge of a duly licensed pilot, whom such owner or master is bound by law to employ and put his vessel in charge of." On the construction of this section, see *River Wear Commissioners v. Adamson*, 2 App. Cas. 713.

[*o*] There are many reported cases where the question has been whether or not the pilotage was compulsory, but in this book it seems needless to go into detail on this point. In certain places where pilotage is compulsory, special provisions have been made that the captain of the ship shall remain solely responsible, as in the case of the Suez Canal; see *The Guy Mannering*, 7 P. D. 132.

[*p*] *Clyde Navigation Co. v. Barclay*, 1 App. Cas. 790; *The Indus*, 12 P. D. 16; *The Velasquez*, L. R., 1 P. C. 491.

[*q*] *General Steam Navigation Co. v. British and Colonial Steam Navigation Co.*, L. R., 4 Ex. 238.

compulsory pilot is not within that section of the Thames Conservancy Act, 1857 (*r*), which makes the owner of every vessel navigating the Thames answerable for all damages “done by such vessel or by any of the boatmen or other person belonging to, or employed in or about the same by any means whatsoever to any of the property or effects of the conservators,” and consequently the owner of the vessel is not liable for damage done by the fault of the pilot (*s*).

And where a master has a power of selection, it makes no difference in his liability for the acts of the person selected, that he is bound to select from a particular class of persons, however numerous or limited that class may be.

Where master has power of selection, he is liable though limited to one class.

Thus, although by the statute for regulating watermen and lightermen on the Thames (*t*), and the bye-laws ordained in pursuance thereof, no one besides freemen or apprentices to freemen, or to widows of freemen, of the Watermen and Lightermen’s Company (with certain exceptions), may navigate craft on the river for hire, within the limits of the Act, under a penalty: but any persons may keep and use craft for carrying their own goods, by their servants being such freemen or apprentices; and on board of every barge, &c. there must be at least one able and skilful man authorized by law to navigate; yet the owner of a barge, who hired two qualified persons to navigate it within the limits, was held liable for injury caused to another vessel by their negligence. And it was held to make no difference whether the navigators were hired for the job or by time (*u*). On that occasion Patteson, J., said,—

Martin v. Temperley.

“On the part of the defendant it is argued that this is the case, not of master and servant, but of an independent contract to perform the work,

(*r*) 20 & 21 Vict. c. cxlvii., s. 96.

(*s*) *Conservators of the River Thames v. Hall*, L. R., 3 C. P. 415.

(*t*) 7 & 8 Geo. 4, c. lxxv. See now 22 & 23 Vict. c. cxxxiii.

(*u*) *Martin v. Temperley*, 4 Q. B. 298. But see *The Hibernian*, L. R., 4 P. C. 511, in which it was held that where the master of a ship was obliged

*Martin v.
Temperley.*

as in *Milligan v. Wedge* (r) and *Quarman v. Burnett* (w). But that is clearly erroneous. Independently of the Act, the men navigating the barges would clearly be the defendant's servants. If the defendant, being at liberty to employ whom he pleased, engaged persons to manage his barges on the Thames, I cannot see how it is possible to contend that they were not his servants, as much as a man whom he might employ to drive his carriage. Where, indeed, a man hires another man's servant from him, though such servant be employed to drive where the person hiring pleases, it has been held in *Quarman v. Burnett*, that the servant so hired is not the servant of the person so hiring. That case certainly carried the exception a great way, but there the servant hired was ordinarily in the employment of the person from whom he was hired, and who let horses along with the driver. That case is not like the present. The second question then is as to the effect of stat. 7 & 8 Geo. 4, c. lxxv. That indeed confined the defendant to employing as his servants only individuals of a particular class. It narrowed the number of persons from whom he could select. But that is very different from the state of things created by the Pilot Act, where a party must take the first pilot who offers himself. Here the defendant had the power of selection though from a limited number : and no case has gone so far as to decide that the person hired ceases to be the servant of the person hiring, if he is necessarily selected from a number, though limited. I was much struck by the argument deduced from the old statute of apprenticeship. According to the doctrine contended for on the part of the defendant, it would hardly have been possible while that Act was in force to employ a man as a servant. I do not put the case on the largeness of the number from which the selection may here be made : the principle seems to me the same whether the number be five hundred or five thousand. If there be a power of selection, and not as in the Pilot Act, a provision preventing any choice, the person hired is the servant of the person hiring."

Liability of
master for
acts of servant
whom he is
obliged by
circumstances
to employ
without power
of selection,
and whose
conduct is
beyond his
control.

There is another class of cases which must be shortly adverted to in this place, though it is believed that there is no actual decision upon the question raised by them—the cases, namely, in which a man is obliged by force of circumstances, and without any power of selection or choice, to employ a particular servant or agent whose conduct is beyond the control or direction of his principal. Such cases, however, cannot often arise, except in cases of salvage, into the law of which moral considerations and considerations of policy enter largely, and which therefore scarcely come within the scope of this work (x).

to select a pilot out of a particular qualified class, this restriction operated to destroy the relation of master and servant which would arise in the case of a free choice made by the master.

(r) 12 A. & E. 737.

(w) 6 M. & W. 499.

(x) See *The Atlas*, 31 L. J., Pr. Mat. & Adm. 210.

There is also a large class of cases which must not be entirely omitted here, but which it will be sufficient to refer to generally, as they do not properly relate to the law of Master and Servant, in which the *owners of fixed real property*, as land and houses, have been held *responsible for the acts of persons not, strictly speaking, their servants*. The doctrine, however, on which these cases rest was placed within its proper limits, in a very elaborate judgment pronounced by Lord Cranworth (*y*), in a case in which he stated that, after full consideration, he had come to the conclusion that no distinction in point of law existed, in cases like that under consideration, between fixed property and ordinary moveable chattels, *unless, perhaps, in cases where the act complained of is such as to amount to a nuisance*.

Owner of fixed property liable for acts of persons not strictly his servants;

but only in cases of nuisance.

We have hitherto been considering chiefly the liability of a master to answer for his servant's acts, which formerly would have given rise to an action on the case. A master may also be liable in trespass for an injury caused by the direct act of his servant, and the difference between the circumstances giving rise to an action of trespass and those affording ground for an action on the case has been the subject of many decisions in which the only question was which form of action the plaintiff should have sued in (*z*).

Liability of master in trespass for servant's act,

If a master *expressly* order his servant to commit a trespass, there can be no difficulty in treating him as a co-trespasser with his servant; and it can make no difference whether he himself were present or absent when the trespass was committed; if it were done by his orders, he would be equally a trespasser in either case.

(*y*) *Reedie v. London and North Western Railway Co.*, 4 Exc. 244, which was an action for damages sustained by a person passing under a viaduct in course of construction on the defendants' railway, and they were held not liable. In that case all the previous authorities will be found. See also *Overton v. Freeman*, 11 C. B. 867; *Knight v. Fox*, 5 Exc. 724, *ante*; *Higgs v. Maynard*, 14 L. T., N. S. 332; *White v. Jameson*, 18 Eq. 303. The case of *Reedie v. London and North Western Railway Co.* has been followed in America, *Simons v. Monier*, 29 Barb. 420.

(*z*) These are referred to in previous editions of this book; and see *Holmes v. Mather*, L. R., 10 Ex. 261.

it done by his
command

M. Laughlin
v. Pryor.

The liability, however, to be sued for trespass in respect of injuries caused by another person does not depend upon the relationship of master and servant, though the existence of that relationship may possibly afford an *à fortiori* reason for holding the master responsible. His liability depends upon the fact, that the act of trespass complained of was done by *his command*, that, in truth, it was *his own* act, although done through the instrumentality of his servant, according to the maxim *Qui facit per alium, per seipsum facere videtur*. Thus (a), where the defendant who, together with a party of friends, had hired a carriage and four horses, driven by two postillions in the service of the owner of the horses, to go to Epsom, rode on the box of the carriage, and in going through a toll-bar, at which there was a crowd, called out to the postillion on the leader "go in there," pointing to a position in front of a gig in which the plaintiff was riding, which belonged to and was driven by M., and the postillion pushed his horses forward, and in doing so, upset the gig and the plaintiff, and M. fell out. Some one in the carriage cried out "go on, go on," but M. got up, stopped the horses and would not allow the carriage to proceed, although the defendant offered to settle then, until the defendant gave his card, saying, that he would be answerable for all that occurred if M. would allow him to proceed. The defendant was held liable in trespass for the injury sustained by the plaintiff; although, according to the decision before adverted to in the case of *Quarman v.*

(a) *M. Laughlin v. Pryor*, 1 M. & G. 48. See *Lucas v. Mason*, L. R., 10 Ex. 251, an action for an assault committed on the plaintiff at a meeting whereof the defendant was chairman. There was a disturbance near where the plaintiff was standing, and the defendant said, "Bring those men to the front," whereupon a steward, whose duty it was to assist the chairman in keeping order, with the help of two policemen, assaulted and injured the plaintiff. The plaintiff himself had not made any disturbance. The defendant was held not to be responsible; there being no pre-existing relationship of master and servant between himself and the steward, nor any evidence of any general or implied authority going beyond the limit of that which was created by the express words used, or of any authority to the persons ordered to bring the disturbers forward to exercise a discretion as to who were disturbers.

Burnett, the postillions could not be considered as his servants : *Ersine, J.*, saying— *McLaughlin v. Pryor.*

“The cases in which it has been decided that *case* will not lie against the hirer of a carriage and horses for the misconduct of the driver, not being his servant, do not apply here ; for this is an action treating the defendant as a co-trespasser, and is not brought against him as a master for the misconduct of his servant.”

Again, if an act of trespass, on the part of a servant, be the *natural or necessary consequence* of an act which his master ordered to be done, his master will be liable to an action of trespass. And in this case, also, the presence or absence of the master at the time the trespass is committed can make no difference in his liability. So, if trespass be the necessary consequence of obeying master's command.

Thus, where (*b*) the defendant, who disputed the plaintiff's right of way through a yard, employed a labourer to lay down rubbish in order to obstruct the way, but gave him orders not to let any of the rubbish touch the plaintiff's wall ; the labourer executed those orders as nearly as he could, but some of the rubbish, it being of a loose kind, naturally shingled down towards and ran against the plaintiff's wall : the defendant was held liable in an action of *trespass*. And *Littledale, J.*, said,—

Gregory v. Piper.

“Where a servant does work by order of his master, and the latter imposes a restriction in the course of executing his order, which it is difficult for the servant to comply with, and the servant, in the execution of the order, breaks through the restriction, the master is liable in trespass. Suppose the case of two persons possessed of contiguous unenclosed land, and that the one of them desired his servant to drive his cattle, but not to let them go upon the land of his neighbour, and that the cattle went upon the land of the neighbour, the master would be answerable in trespass, because he has only a right to expect from his servant ordinary, not extraordinary, care. If the servant, therefore, in carrying into execution the orders of his master uses ordinary care, and an injury is done to another, the master is liable in trespass. If the injury arise from the want of ordinary care in the servant, the master will only be liable in case. Here the servant used ordinary care in the course of executing his master's order and notwithstanding that the rubbish ran against the wall.”

And if an act of trespass be committed by a servant on behalf and for the benefit of his master, it is perfectly

Or for the benefit of, and ratified by, master.

(*b*) *Gregory v. Piper*, 9 B. & C. 591. See *Sharrod v. London and North Western Railway Co.*, 4 Ex. 580.

clear that the master, although he gave no previous command to his servant to commit the trespass, may nevertheless render himself liable to an action of trespass by a subsequent ratification of the servant's act (c).

Superior
public officers
not liable for
acts of in-
ferior officers.

An exception, however, to the general rule, which renders a man responsible in a civil action for the tortious acts of those employed by or under him, is to be found in the case of *servants of the Crown* (d), such as the postmaster-general, the lords commissioners of the treasury, the commissioners of customs and excise, the auditors of the exchequer, &c., who are *not liable*, as such, for any negligence or misconduct of the *inferior officers* in their several departments (e). The principle upon which their non-liability depends was settled in the year 1699, in an action brought against the postmaster-general, for the loss of a letter containing exchequer bills, by the negligence of his servants and deputies: and three judges, against Lord Holt, held, that the plaintiff was *not* entitled to recover (f). The ground of

Lane v.
Cotton.

(c) *Eastern Counties Railway Co. v. Broom*, 6 Exc. 314. In that case an officer of the company took Broom into custody for breach of the company's bye-laws, and took him before a magistrate: when the attorney of the company attended to prefer a charge against Broom. This was held *not* to amount to a ratification of the act of the officer. And see *Bayley v. Manchester, Sheffield and Lincolnshire Railway Co.*, L. R., 7 C. P. 415; L. R., 8 C. P. 148. Mere knowledge is no evidence of ratification, *Moon v. Towers*, 8 C. B., N. S. 611. In *Marsh v. Joseph*, (1897) 1 Ch. 213, Lord Russell, C. J., said: "To constitute a binding adoption of acts *à priori* unauthorized, these conditions must exist: (1) The acts must have been done for and in the name of the supposed principal, and (2) there must be full knowledge of what those acts were, or such an unqualified adoption that the inference may properly be shown that the principal intended to take upon himself the responsibility for such acts, whatever they were." In *Firth v. Staines*, (1897) 2 Q. B. 70, Wright, J., lays down three conditions which must be satisfied to constitute a valid ratification: "First, the agent whose act is sought to be ratified must have purported to act for the principal; secondly, at the time the act was done, the agent must have had a competent principal; and, thirdly, at the time of the ratification the principal must be legally capable of doing the act himself."

(d) The Trinity House is not a servant of the Crown so as to be exempt from liability to an action for negligence in the performance of its duties: *Gilbert v. Trinity House*, 17 Q. B. D. 795.

(e) Comp. 766; see *Story on Agency*, 319. The subordinates themselves, however, may be responsible, *Feather v. Reg.*, 35 L. J., Q. B. 200, and other cases cited in the next chapter on the Liability of Servants.

(f) *Lane v. Cotton*, 1 Lord Raym. 616; see *Winterbottom v. Wright*, 10 M. & W. 109, and the general principles of law laid down by *Romer, J.*, in *Ratlev v. Treacher*, (1898) 1 Ch. 73.

the opinion of the three judges appears to have been, that the post-office establishment is a branch of the public police created by statute for purposes of revenue as well as for public convenience, and that the Government have the management and control of the whole concern. It is, in short, a Government instrument, established for its own great purposes. The postmasters enter into no contract with individuals, and receive no hire, like common carriers, in proportion to the risk and value of the letters under their charge, but only a general compensation from Government. The same question was again still more elaborately discussed in 1778 in an action brought against the postmaster-general, to recover the amount of a bank-note stolen out of a letter by one of the sorters of letters, when the Court adhered to the doctrine of the three judges, in *Lane v. Cotton*, against the opinion of Lord Holt. In that case (g) Lord Mansfield said,—

*Whitfield v.
Lord Le
Despencer.*

“The ground of Lord Chief Justice Holt’s opinion in that case is founded upon comparing the situation of the postmaster to that of a common carrier, or the master of a ship taking goods on board for freight. Now, with all deference to so great an opinion, the comparison between a postmaster and a carrier or the master of a ship seems to me to hold in no particular whatever. The postmaster has *no hire*, enters into *no contract*, carries on *no merchandise or commerce*. But the post-office is a *branch of revenue* and a *branch of police*, created by Act of Parliament. As a branch of revenue there are great receipts; but there is likewise a great surplus of benefit and advantage to the public, arising from the fund. As a branch of police, it puts the whole correspondence of the kingdom (for the exceptions are very trifling) under Government, and intrusts the management and direction of it to the Crown, and officers appointed by the Crown. There is no analogy, therefore, between the case of the postmaster and a common carrier” (h).

Upon similar principles, the captain of a man-of-war has been held not responsible for damage done to another vessel by his ship, during the watch of the first lieutenant, who was on deck and had the direction of the ship—the captain not being on deck, nor called upon by

*Nicholson v.
Mouncey.*

(g) *Whitfield v. Lord Le Despencer*, Cowp. 754, at page 764.

(h) See Story on Bailm. s. 462; Story on Agency, s. 319, note 2.

his duty to be so, as he did not appoint the officers or crew, and had no choice whether he would serve with them or not, and had no power of dismissal over them. They were, in fact, all servants of the same master (*i*). These three last-mentioned cases were, in fact, decided upon the ground that the Government was the principal and the defendant merely the servant (*j*).

Aliter, for
acts of *their*
own servant.
Lord North's
case.

But this exception would not apply so as to exempt a person, who was a public officer, from responsibility for the act of one who *was* his own servant. And, therefore, in *Lord North's case* (*k*), where it appeared that King Edw. 6 sold a quantity of lead, and appointed Lord North, who was Chancellor of his Court of Augmentations, to take bond for payment of the money, and Lord North ordered his clerk to take the bond, which was done, and the bond delivered to Lord North, who gave it back again to his clerk in order to send it to the clerk of the Court of Augmentations, but Lord North's clerk suppressed the bond: it was the opinion of all the judges in England, that Lord North was chargeable to the king.

Former sup-
posed excep-
tion in the
case of public
bodies.

Another exception to the general rule above stated was formerly (*l*) supposed to exist in favour of public bodies constituted by statute for local purposes, and acting gratuitously, such as commissioners of sewers, paving commissioners, navigation commissioners, &c., and trustees of turnpike roads, who were held not responsible for damage done by persons acting under their orders, in carrying into effect the purposes for which they were appointed (*m*).

(*i*) *Nicholson v. Monney*, 15 East, 384.

(*j*) See per Blackburn, J., in *Mersey Docks and Harbour Board v. Gibbs*, L. R., 1 H. L. 93. See also *Buron v. Denman*, 2 Ex. 167.

(*k*) Dyer, 161; see *Boson v. Sandford*, 3 Mod. 521.

(*l*) *Hall v. Smith*, 2 Bing. 156, was one of the principal cases in which this was held.

(*m*) Where any action, prosecution or other proceeding is commenced "against any person for any act done in pursuance, or execution or intended execution, of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, duty or authority," it must be commenced within six months next after the act, neglect, or default complained of, or in case of a continuance of injury or damage within six months next after the ceasing thereof: see sect. 1, and other

But the cases which had been decided in accordance with this supposed exception were fully considered in the House of Lords (*n*), and were overruled. Blackburn, J., delivered the opinion of the judges in answer to the questions put to them by the House, and the House of Lords approved of what he then said. He said :—

“ We think that in the absence of anything in the statutes (which create such corporations) showing a contrary intention in the Legislature, the true rule of construction is, that the Legislature intended that the liability of corporations thus substituted for individuals should, to the extent of their corporate funds (*o*), be co-extensive with that imposed by the general law on the owners of similar works.”

And again he said,—

“ In our opinion the proper rule of construction of such statutes is that, in the absence of something to show a contrary intention, the Legislature intends that the body, the creature of the statute, shall have the same duties, and that its funds shall be rendered subject to the same liabilities as the general law would impose on a private person doing the same things.”

Another exception to the general responsibility of a master for the tortious acts of his servant is established by the cases already considered in the preceding chapter, in which it has been held that a master is not responsible to his own servant for any injury happening to him through the negligence or wrongful act of a fellow-servant. In order, however, to bring a case within this exception it must, as we have seen, appear that both the servant injured and the wrongdoer were, at the time the injury was done, acting in the service of the common master,

Master not liable to one servant for torts of another.

provisions of the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), which also abolishes the necessity for notice of action formerly required by many Acts of Parliament in actions of this kind.

(*n*) *Mersey Docks Trustees v. Gibbs*, L. R., 1 H. L. 93. See also *Coe v. Wise*, L. R., 1 Q. B. 711; and *Foreman v. Mayor of Canterbury*, L. R., 6 Q. B. 214.

(*o*) In *R. v. Selby Dam Drainage Commissioners*, (1892) 1 Q. B. 348, the prosecutor had recovered judgment in an action for negligence against the defendants, but the defendants had no goods available in execution. The Court of Appeal held that he was entitled to a mandamus to compel the defendants to make a rate under their local Act for the purpose of raising money to pay the judgment debt.

and also, that the wrongdoer was a person of ordinary skill and care. But where these circumstances concur, the party injured has no remedy against his master, except in cases within the Employers' Liability Act, 1880, and in cases within the Workmen's Compensation Acts, 1897 and 1900. These three Acts will all be found in the Appendix.

CHAPTER VI.

THE LIABILITY OF A SERVANT TO THIRD PERSONS FOR
ACTS DONE ON BEHALF OF HIS MASTER.

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IN CASES OF CONTRACT.

GENERALLY speaking, a servant who, having authority to do so, enters into a contract in his master's name, is not himself personally liable upon such contract (*a*), though he *may*, undoubtedly, like any other agent, contract in such a manner as to make himself personally liable (*b*).

Servant not generally liable upon contracts entered into in his master's name ;

In order to make a servant liable personally on a contract made in his master's name, there must be some wrong or omission of right on the part of the servant (*c*). Thus, if he do not possess authority from his master to contract in his name, or, which is in effect the same thing, if he exceed the authority given him, and fraudulently misrepresent his authority, there can be no doubt that he will be personally liable to the person with whom he deals in his master's name. If, however, the person dealing with him *knows* of his want of authority and yet chooses to charge the master, it would seem that

but may be liable.

(*a*) Paley on Ag. 368 ; Story on Ag. 261 ; *Ex parte Hartopp*, 12 Ves. 352 ; *Owen v. Gooch*, 2 Esp. 567.

(*b*) *Per* Ashurst, J., in *Macbeath v. Haldimand*, 1 T. R. 172 ; *per* Bayley, J., in *Thomson v. Davenport*, 9 B. & C. 88 ; and in *Burrell v. Jones*, 3 B. & Ald. 50.

(*c*) *Smout v. Ilbery*, 10 M. & W. 1.

the servant could not afterwards be made liable in the event of the master failing to pay (*d*). Questions of this sort frequently resolve themselves into mere questions of credit. To whom was the credit given? The answer to which must depend upon the circumstances of the case. If the credit was given to the master, the servant could not be made liable, provided he had authority to contract. But if the credit was given to the servant, even for goods supplied for his master's use, he could not discharge himself from liability on the ground that he was a mere agent. A servant would also be liable if, at the time he entered into a contract, he did not disclose his master's name, and it was not known to the party contracting with him, although he was known to be a mere agent (*e*).

The following rather curious case shows the difficulty servants may get into by using their own names when in reality acting for their masters (*f*).

*Williamson v.
Barton.*

The plaintiff, a farmer, put up the produce of his farm to auction. The defendant had been for some time previous to, and at the time of the sale was, foreman to S., a contractor, which was well known to the plaintiff, who was present at the sale, but was not known to the auctioneer. The defendant at the auction bid for several lots of hay, and when the auctioneer asked for his name, in the usual way, he answered "Barton" only, and the auctioneer wrote it down as the name of the buyer. A few days after the sale the auctioneer sent in an account to the defendant. The hay was without any direction or interference of the defendant, taken away in S.'s carts, and consumed by his horses before his death, which occurred ten days after the auction. An action was brought against the defendant for the price of the hay, to

d *Paterson v. Gaudesqui*, 15 East, 62; 2 Smith's L. C.

e So in the case of auctioneers, *Hanson v. Roberdeau*, Peake, 163; *Franklyn v. Lamond*, 4 C. B. 637. See *Fisher v. Marsh*, 34 L. J., Q. B. 177.

f *Williamson v. Barton*, 31 L. J., Exc. 171. In *Ex parte Bird*, 33 L. J., Bankr. 49, an agent taking shares in his own name was held liable as a contributory.

which the defence set up was that defendant bought the hay for his master S. At the trial the jury found for the defendant. But upon a rule for a new trial the judges were equally divided in opinion as to his liability, and leave to appeal was granted, but the appeal does not appear to have been argued.

But where a servant has once had authority to contract in his master's name, and the authority is revoked without his knowledge, he would not be liable upon contracts entered into in his master's name, in ignorance of the revocation of his authority. If for instance, a man leaves a housekeeper in possession of his house, and goes abroad and dies, the housekeeper would not be liable to pay for goods obtained on her master's credit after his death, and before she knew of his death, provided they were of a description which she *was* authorized by her master to pledge his credit for during his life (*g*); although in such case her master's representatives would not be liable, as her authority to pledge his credit was in fact revoked by his death (*h*).

Servant not liable if his authority revoked without his knowledge

Death of master.

When clerks or other servants enter into written contracts on behalf of their employers, they should be careful to do so in such a manner as to exclude the possibility of their being personally liable themselves upon such contract, in the event of their employer failing to perform the engagements thus entered into. For if such a contract purport on the face of it to bind the clerk, or party signing it, himself personally, it is not competent for him to discharge himself from liability by evidence that he was acting merely in a ministerial capacity as agent for his employer (*i*). To exempt

How servant can avoid personal liability upon contracts entered into on behalf of his master.

(*g*) *Smout v. Ilbery*, 10 M. & W. 1. The principle of this case applies also to a revocation of authority by the dissolution of a company as well as by the death of an individual: *Salton v. New Beeston Cycle Co.*, (1900) 1 Ch. 43; and see *Re Oriental Bank*, 28 Ch. D. 634.

(*h*) *Blades v. Free*, 9 B. & C. 167. As to acts done under a power of attorney, see *Conveyancing and Law of Property Act*, 1881 (44 & 45 Vict. c. 41), s. 47.

(*i*) *Higgins v. Senior*, 8 M. & W. 834; *Kelner v. Baxter*, L. R., 2 C. P. 174. And see *ib.* that the master himself may be liable if he were the real principal. See also *Calder v. Dobell*, L. R., 6 C. P. 486. But if the written contract

himself from personal responsibility, a clerk should either sign his employer's name, or, if he signs his own, should expressly state his ministerial character, as by using the words "per procuration," or other words of a similar import (*k*).

Clerks held
liable on bills
drawn for
their master.

The necessity of the above caution is exemplified by the following cases, in which clerks have been held personally liable upon bills of exchange accepted or drawn for the benefit of their employers:—

*Thomas v.
Bishop.*

Thus, where (*l*) the defendant accepted *generally* a bill of exchange directed to him by the name of "H. B., cashier of the York Buildings Company," he was held personally liable for the amount of the bill to an indorsee, although he proved that the letter of advice was addressed to the company, and that the bill being brought to their house, he was ordered to accept it, which he did in the same manner that he had accepted other bills. For the bill, on the face of it, imported to be drawn on the defendant, and it was accepted by him generally, and not as servant to the company, to whose account he had no right to charge it till actual payment by himself.

*Lefevre v.
Lloyd.*

So where (*m*) a broker, who was employed to sell goods, drew a bill for the price on the purchaser, he (the broker) was held liable upon the bill, although it was contended that he merely drew as the servant of the

describe the person who is really only an agent as principal, the real principal can neither sue nor be sued upon the contract, *Humble v. Hunter*, 12 Q. B. 310.

(*k*) Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 26. As to indorsement forged "by procuration," see *Charles v. Blackwell*, 2 C. P. D. 151.

(*l*) *Thomas v. Bishop*, 2 Str. 955; *Healey v. Story*, 3 Exc. 3. Mr. Justice Story, in his work on Agency, s. 159, note 3, and 269, note 1, seems to doubt the authority of *Thomas v. Bishop*, and, in the latter note, quotes an American case to show that such notes as that in *Thomas v. Bishop* are, in America, regarded as drawn upon the drawee in his official capacity. But in the case he quotes, the acceptance was "as agent." And it would seem that the mode in which the bill in *Thomas v. Bishop* was addressed to the defendant, left it ambiguous whether the words "cashier," &c., were mere words of description or not, and the defendant, by accepting the bill *generally*, showed that he considered the bill to be addressed to him personally, and not in his official character. See the observations of Patterson, J., in *Davis v. Clarke*, 6 Q. B. 16. *Jenkins v. Morris*, 16 M. & W. 877, is a case the converse of *Thomas v. Bishop*.

(*m*) *Lefevre v. Lloyd*, 5 Taunt. 749; *Sowerby v. Butcher*, 2 Cr. & M. 368.

seller; for, having put his name on the bill, all the legal consequences of the act attached to him as much as to any other person whose name was thereon.

Again, where (*n*) a bill of exchange was directed to “Mr. James Diamond, purser, West Downs Mining Company,” and accepted thus: “James Diamond, accepted per proc. West Downs Mining Company,” Diamond was held personally liable upon it, as the legal effect of the acceptance was that he accepted in his own right as principal, and as agent for all the other members of the firm, but as the bill was only directed to him he only was liable. *Nicholls v. Diamond.*

So where (*o*) a bill of exchange was directed to “Mr. W. C.,” and “accepted for the company, W. C. purser.” W. C. was held personally liable: and Lord Campbell said,—*Mare v. Charles.*

“*Thomas v. Bishop*, it appears, has been doubted on the other side of the Atlantic, but for a century it has been uniformly considered good law in this country, and it is clearly in point. In *Nicholls v. Diamond*, the decision itself, and far the greater part of the reasoning in the judgments, are precisely what we now adopt.”

So where the trustees and secretary of a benefit building society signed promissory notes in the following form: “Midland Counties Building Society. No. 3, Birmingham, March 12, 1858. Two months after demand we promise to pay P. 100*l.*, with interest after the rate of six pounds per cent. per annum. W. R. Heath, John Taylor, Trustees; W. D. Fisher, Secretary:” both trustees (*p*) and secretary (*q*) were held to be personally liable. *Price v. Taylor.*
Bottomley v. Fisher.

(*n*) *Nicholls v. Diamond*, 9 Ex. 156.

(*o*) *Mare v. Charles*, 5 E. & B. 978. See also *Penrose v. Martyn*, 28 L. J., Q. B. 29, where the secretary to a joint-stock company (limited) was held personally liable upon a bill which he accepted as secretary, but omitting the word “limited,” under 19 & 20 Vict. c. 47, s. 31; and *Atkins v. Wardle*, 58 L. J., Q. B. 377.

(*p*) *Price v. Taylor*, 5 H. & N. 540; *Allan v. Miller*, 22 L. T. Rep. 825.

(*q*) *Bottomley v. Fisher*, 31 L. J., Ex. 417. If a servant is called upon to pay a sum due from his master which his master is liable to pay, but he is not, and after discussion and threat of litigation the servant gives a promissory note in his own name for the amount, he is bound to pay it when due, and cannot set up as a defence that there was no consideration for the note, *Cook v. Wright*, 30 L. J., Q. B. 321.

Although party taking the bill *knew* clerk to be acting for his master.

Leadbitter v. Farrow.

And in such cases it makes no difference that a party taking the bill, do so with full knowledge that a person whose name is on the bill is a mere servant. Thus, the agent to a country bank, to whom the plaintiff sent a sum of money in order to procure a bill upon London, and who, thereupon, drew a bill in his own name for the amount upon the firm in London, the two firms being the same, was held personally liable as drawer of the bill, although the plaintiff *knew* that he was agent, and supposed that the bill was drawn by him as such, and on account of the country bank, to which the agent paid over the money (*r*), and Lord Ellenborough said,—

"Is it not a universal rule that a man who puts his name to a bill of exchange thereby makes himself personally liable, unless he states upon the face of the bill that he subscribes it *for* another, or by procuration of another, which are words of exclusion? Unless he says plainly, 'I am the mere scribe,' he becomes liable. Now, in the present case, although the plaintiff knew the defendant to be agent to the Durham bank, he might not know but that he meant to offer his own responsibility. Every person, it is to be presumed, who takes a bill of the drawer, expects that his responsibility is to be pledged to its being accepted. Giving full effect to the circumstance that the plaintiff knew the defendant to be agent, still the defendant is liable like any other drawer who puts his name to a bill without denoting that he does it in the character of procurator. The defendant has not done so, and therefore has made himself liable."

Reason.

The rule illustrated by these cases is an inflexible one, and is by no means confined to bills of exchange, but applies to other written contracts (*s*), and is founded upon the principle before adverted to, that parol evidence is not admissible to contradict or vary any contract which has been reduced to writing (*t*).

(*r*) *Leadbitter v. Farrow*, 5 M. & S. 345; and see *per* Gibbs, C. J., in *Groupp v. Hayden*, 7 Taunt. 162.

(*s*) *Jones v. Littlehale*, 6 A. & E. 486; *Mayce v. Atkinson*, 2 M. & W. 410. See *per* Lord Wensleydale, in *Higgins v. Senior*, 8 M. & W. 845; *Kelner v. Baxter*, L. R., 2 C. P. 174.

(*t*) *Ante*, Chapter II. Where brokers make a contract on behalf of undisclosed principals, evidence is admissible of a custom in the trade to make the brokers liable under the contract as well as their principals: *Pike v. Ongley*, 18 Q. B. D. 708; *Hutchinson v. Tatham*, L. R., 8 C. P. 482; *Southwell v. Bowditch*, 1 C. P. D. 374.

Where written contracts are entered into by clerks or other agents a difficulty frequently arises, from the mode in which they are worded, as to the meaning of the parties; whether they intended to contract for themselves personally or not. In such cases the general rule applies, that the construction of written documents is for the Court. And it may be said, that, generally speaking, the onus of proving that a person who has signed a written document merely acted as agent for some one else in so doing, lies upon the agent who would exempt himself from responsibility (*u*).

Cases where it is doubtful whether servant bound personally.

When the defendant covenanted "for himself, his heirs, executors, &c., on the part and on behalf of" A. B., that A. B. would pay a sum of money, the defendant was held personally liable (*u*).

Held liable in *Appleton v. Binks*.

So where the solicitors of the assignees of a bankrupt, upon whose lands a distress had been put by the landlord, gave a written undertaking, thus: "We, as solicitors to the assignees, undertake to pay," &c.; they were held personally liable (*x*).

Burrell v. Jones.

Again, where "C., on the part of N.," agreed to let certain premises to P. for a term of years, and C. signed the agreement but N. did not, C. was held personally liable to an action for not completing the lease (*y*).

Tanner v. Christian.

So where "R. and F., of London, merchants," signed a charter-party "by authority of and as agents for Mr. A. H. S., of Memel," R. and F. were held personally liable for a breach of it (*z*).

Lennard v. Robinson.

But where the defendants, who were fruit brokers, signed in their own names a sold note in which it was stated that "We have this day sold to you on account of

Gadd v. Houghton.

(*u*) Smith's Merc. Law, 152.

(*w*) *Appleton v. Binks*, 5 East, 148. See *Downman v. Williams*, 7 Q. B. 103; *Norton v. Heron*, 1 C. & P. 648.

(*x*) *Burrell v. Jones*, 3 B. & Ald. 47; and see *Ireson v. Cunningham*, 1 B. & C. 160; *Hall v. Ashurst*, 1 C. & M. 714; *Watson v. Murrell*, 1 C. & P. 307.

(*y*) *Tanner v. Christian*, 4 E. & B. 591; and see *Reid v. Dreaper*, 30 L. J., Exc. 268.

(*z*) *Lennard v. Robinson*, 5 E. & B. 125; see also *Cooke v. Wilson*, 1 C. B., N. S. 153; *Parker v. Window*, 7 E. & B. 942.

*Gadd v.
Houghton.*

James Morand & Co., Valencia, 2,000 cases Valencia oranges," the Court of Appeal held (a) that the words "on account of" showed an intention to make the foreign principals, and not the brokers, liable, and that the brokers were not liable on the contract.

And where the defendants signed a contract on behalf of a proposed company, they were held personally liable (b).

Agent held
not liable in
*Spittle v.
Lavender.*

But where A. an auctioneer, entered into and signed an agreement as agent of B., and B. shortly afterwards signed it with the words, "I hereby sanction this agreement, and approve of A.'s having signed it on my behalf," it was held that A. was not personally responsible (c).

*Dowdman v.
Williams.*

And so where A. (an agent) made a promise in the following terms: "I undertake (on behalf of Messrs. E. & Co.) to pay," &c., it was held to be (upon the face of it) an undertaking as agent, and not to be binding upon A. personally, as there appeared to be no want of authority on his part to make such an undertaking, and no excess of authority in making it (d).

*Lewis v.
Nicholson.*

So, again, where solicitors to certain assignees, "on behalf of the assignees," consented to do certain things, the solicitors were held not to be personally liable (e).

*Ex parte
Buckley.*

And where a banker signed a promissory note, "I promise to pay," &c., "for C. M. P. and S., R. M.," it was

a) *Gadd v. Houghton*, 1 Ex. D. 357, disapproving *Pace v. Walker*, L. R., 5 Ex. 173, in which the defendants, who contracted "as agents," were held personally liable. *Pace v. Walker* was followed in *Hough v. Manzanos*, 4 Ex. D. 104. See also *Deslandes v. Gregory*, 30 L. J., Q. B. 36, where the defendants, having signed a charter-party "as agents," were held not liable. In *Dutton v. Marsh*, L. R., 6 Q. B. 361, where a promissory note had been made by the directors of a company, they were held personally liable, the affixing of the company's seal not relieving them. In *Wake v. Harrop*, 31 L. J., Ex. 451, H. signed a charter-party "for D. & Co., H. agent," and it was held to be a good defence, by way of equitable plea, that it was originally agreed between plaintiff and defendant that defendant was only to sign as agent, and not to be personally liable.

(b) *Kelner v. Baxter*, L. R., 2 C. P. 174; *Scott v. Lord Ebury*, L. R., 2 C. P. 255.

(c) *Spittle v. Lavender*, 2 Brod. & B. 452; *Bowen v. Morris*, 2 Taunt. 374.

(d) *Dowdman v. Williams*, 7 Q. B. 103; see the American cases cited in Story on Ag. 451.

(e) *Lewis v. Nicholson*, 18 Q. B. 503.

held that this did not give a separate right of action against the party signing (*f*).

Again, where a contract was made in London, as follows: "Contract between Messrs. V. & T., Morlaix, France, and M. (plaintiff), London. M. engages himself hereby with Messrs. V. & T., Morlaix, from, &c., till, &c., for the proper and merchantable cutting, messing and preparing of French provisions, at Morlaix (as pork, beef and bacon), on receiving a free passage out to Morlaix from London and back again, and wages of 30s. sterling per week, Messrs. V. & T. finding the requisite tools. Should any differences arise on account of M.'s inability or improper conduct, this contract is to be considered null and void, and M. has no claim for further wages nor free passage back to London." And signed, "For V. & T., Charles Kekule" (defendant). The defendant was held not to be personally liable (*g*).

Mahony v. Kekule.

Again, where three directors signed a promissory note in this form: "Three months after date we jointly promise to pay F. S. or order 600*l.*, for value received in stock on account of the L. & B. Iron and Hardware Co., limited;" they were held not to be personally liable (*h*).

Lindus v. Melrose.

And where the secretary to a railway company signed a note in this form: "On demand I promise to pay R. 1,500*l.* with legal interest until paid, value received. For the M. T. & W. Railway Company, J. Sizer, Secretary;" he was held not to be personally liable; Kelly, C. B., referring to the well-known form of a Bank of England note, for which no one ever thought of making the officer who signs personally liable (*i*).

Alexander v. Sizer.

(*f*) *Ex parte Buckley*, 14 M. & W. 469.

(*g*) *Mahony v. Kekule*, 14 C. B. 390; and see *Green v. Kopke*, 18 C. B. 519, that in all cases it is a question of intention to be gathered from the terms of the contract; whether the principal be a foreigner or not.

(*h*) *Lindus v. Melrose*, 3 H. & N. 177; see *Aggs v. Nicholson*, 1 H. & N. 165.

(*i*) *Alexander v. Sizer*, 1. R., 4 Ex. 102. Where judgment has been obtained against the master, the servant cannot be sued. *Priestley v. Fernie*, 34 L. J., Exc. 172.

*Lucas v.
Beale.*

Where the plaintiff and several others, being performers in the orchestra at the opera, Covent Garden, had a claim against the defendant for thirteen nights' salary, and negotiations took place in the green-room of the theatre, the plaintiff acting on behalf of himself and the other performers, and the plaintiff signed the following document: "The gentlemen of the orchestra, &c., are willing and hereby pledge themselves to continue their services and attend their duties provided B. will guarantee the payment of the thirteen nights due on the 5th ult. Signed on behalf of the gentlemen of the orchestra. C. Lucas;" it was held to be a joint contract, and that the plaintiff could not sue alone for a breach of it (*k*).

Remedy
against
servant when
unauthorized
by master to
contract.

A person who induces another to contract with him as the agent of a third party by an unqualified assertion of his being authorized to act as such agent is answerable to the person who so contracts for any damages he may sustain by reason of the assertion of authority being untrue; and a person, professing to contract as agent for another, impliedly, if not expressly, undertakes to or promises the person who enters into such contract upon the faith of the professed agent being duly authorized, that the authority which he professes to have does in point of fact exist (*l*).

An agent who has put himself in this position is not

k. *Lucas v. Beale*, 10 C. B. 739; *Jung v. Phosphate of Lime Co.*, L. R., 3 C. P. 139.

l. *Colten v. Wright*, 8 E. & B. 617; see also *Polhill v. Walter*, 3 B. & Ad. 111; *Jenkins v. Hutchinson*, 13 Q. B. 711; *Randell v. Trimen*, 18 C. B. 786; *Richardson v. Dunn*, 30 L. J., C. P. 44; *Beattie v. Lord Ebury*, L. R., 7 H. L. 102; *Wicks v. Probert*, L. R., 8 C. P. 437; *Richardson v. Williamson*, L. R., 6 Q. B. 276; *West London Commercial Bank v. Kitson*, 13 Q. B. D. 360; *Oliver v. Bank of England*, (1901) 1 Ch. 652. As to measure of damages, see *Meek v. Wendt*, 21 Q. B. D. 126. The principle of *Colten v. Wright* extends further than the case of one person inducing another to enter into a contract. "The rule to be deduced is that where a person, by asserting that he has the authority of the principal, induces another person to enter into any transaction which he would not have entered into but for that assertion, and the assertion turns out to be untrue, to the injury of the person to whom it was made, it must be taken that the person making it undertook that it was true, and he is liable personally for the damage that has occurred," *Forbuck's Executors v. Humphreys*, 18 Q. B. D. 51.

liable on the contract itself (*m*), but can be sued for damages for breach of warranty of authority.

This doctrine is not applicable to the case of a contract made by a public servant acting on behalf of the Crown (*n*).

A question, however, more frequently arises as to the personal responsibility of a clerk, or other servant, or agent, to persons other than his master, or principal, for money which has been paid to him on account of his master. And the question is one of much importance, and some difficulty. The general rule applicable to cases of this sort, undoubtedly, is that payment to a clerk, or servant, authorized to receive the money (*o*), is payment to the master, who receives by the hand of his clerk (*p*). Generally speaking, therefore, when money is *rightfully* obtained by, or paid to, a clerk, or other servant, authorized to receive it on account of his master, any action to recover it back should be brought against the master (*q*). And this rule is but just: for

Servant not generally liable to third persons for money paid to him on account of his master

(*m*) *Lewis v. Nicholson*, 18 Q. B. 503. In some American Courts the agent is held directly answerable on the contract as a party, and the name of the person for whom he assumed to act is rejected as surplusage. This appears to be a matter of form rather than substance. See Collins, L. J., in *Thompson v. London County Council*, (1899) 1 Q. B. 840, referring to *Kelner v. Baxter*, L. R., 2 C. P. 174, in which an agent was held personally liable on a contract entered into by him professedly as agent, because his alleged principal was in fact non-existent. As to the effect of knowledge of the person contracting with the alleged agent that the agent's alleged authority was non-existent, see *Halbot v. Lens*, (1901) 1 Ch. 344. In *Bennetts v. M'Ilwraith*, (1896) 2 Q. B. 464, the plaintiffs, being in doubt as to whether the defendants had or had not authority, were allowed to add the alleged principals as defendants.

(*n*) *Dunn v. Macdonald*, (1897) 1 Q. B. 555. In *Graham v. Commissioners of Public Works*, (1901) 2 K. B. 781, it was held that an action for breach of contract would lie against the defendants, an incorporated body, though servants of the Crown.

(*o*) *Ellis v. Goulton*, (1893) 1 Q. B. 350. Otherwise he is a mere stranger. See *Bridges v. Garrett*, L. R., 5 C. P. 451; *Papé v. Westacott*, (1894) 1 Q. B. 272.

(*p*) See *Ex parte Byrnes*, 35 L. J., Bankr. 43, that possession by a clerk of his master's books is possession by the master. In *R. v. Lambton*, 5 Price, 428, where a man made up a parcel of bills and notes and gave them to his servant to give to the postman, it was held to be clear that until the servant had done so they were in the possession of the master, and liable to be seized under an extent against him, and that, although the bills were specially endorsed.

(*q*) Selw. N. P. 102, 11th ed.; Paley on Ag. 388; see *Hemming v. Hale*, 29 L. J., C. P. 137; *Collins v. Brook*, 29 L. J., Ex. 255.

since, in general, an agent cannot dispute the title of his principal—and it is only in very special cases (*r*) that he can set up *jus tertii* against his principal—a servant who had received money on account of his master could not dispute his master's right to it, and to hold the servant responsible to third persons would be to subject him to two actions for the same cause.

*Sadler v.
Evans.*

Upon this principle depends the case of *Sadler v. Evans* (s). In that case it appeared that the defendant, as receiver to Lady W., received quit-rent due to her from the plaintiff, and gave a receipt for it as such. The plaintiff, contending that Lady W. was not entitled to the quit-rent, brought an action for money had and received against the receiver, but was nonsuited on the ground that the payment to the receiver was payment to Lady W., and the action ought to have been brought against her. And the Court, in discharging a rule which had been obtained to set aside the nonsuit, observed, that in cases of payment to a known agent, the action ought to be brought against the principal, unless in special cases (as under notice, or *mulâ fide*).

Master liable.
*The Duke of
Norfolk v.
Worthy.*

The principle upon which *Sadler v. Evans* was decided may be not inaptly illustrated by a case the exact converse of it. The defendant's agent, R., had contracted to sell an estate belonging to the defendant to the plaintiff, and had received a deposit from him; but the conditions of sale not being complied with, the plaintiff brought an action against the defendant to recover his deposit. On the part of the defendant it was objected that no proof was given that the deposit had been paid over to him, and, in fact, it had not been paid to him. But Lord Ellenborough said it made no difference whether it was

(r) Such, for instance, as where the master has been guilty of fraud, see *Hardman v. Willcock*, 9 Bing. 382, note; *Cheesman v. Erall*, 6 Exc. 341; *Sheridan v. New Quay Co.*, 28 L. J., C. P. 58; or what is equivalent to eviction by title paramount, *Biddle v. Bond*, 34 L. J., Q. B. 137; approved in *Rogers v. Lambert*, (1891) 1 Q. B. 318.

(s) 4 Burr. 1985; see *Greenway v. Hurd*, 4 T. R. 553; *Stevenson v. Mortimer*, Cowp. 806; acc. in America, *Colvin v. Holbrook*, 2 Comst. Rep. 126.

actually paid over or not ; R. acted completely as the agent of the defendant ; therefore, when the deposit was lodged with the agent, this was in law, *eo instanti* a payment to the principal (t).

And the following cases, where the action was against the clerk, servant, or agent, were decided upon similar principles :—The defendant, a banker's clerk, signed a receipt for money paid into the bank by the plaintiff, thus : "For Spooner and Attwood, Wm. Read." He was held not liable to an action for money had and received at the suit of the plaintiff ; but the action should have been brought against Spooner and Attwood ; the receipt being evidence that they, and not the defendant, had received the money (u).

Clerk not
liable.

*Edden v.
Read.*

And so an attorney's clerk, who, in his master's absence, received some money which was paid to him at his master's office, by a debtor to a client of his master, and signed a receipt thus, "For Mr. S. John, John Badcock," was not responsible to the client for the money, although he had not paid it over to his master, as he was accountable to his master for it, and the client must look to him for redress. And Lord Tenterden said, "It is perfectly clear that the defendant received the money as the agent or servant of John, and must have paid it over to him if he had returned. The receipt given was the receipt of John, and (if he had not been bankrupt) would have been evidence against him in an action brought by the present plaintiff" (x).

*Stephens v.
Badcock.*

Upon similar principles it has been held (y) that attorneys, who, upon an agreement for the sale of an estate belonging to one Stott, had, as his agents, received from the plaintiff a deposit, were not liable to an action at the suit of the plaintiff for a return of the deposit, on

*Bamford v.
Shuttleworth.*

(t) *Duke of Norfolk v. Worthy*, 1 Camp. 337 ; *Edgell v. Day*, L. R., 1 C. P. 80 ; *Ellis v. Goulton*, (1893) 1 Q. B. 350.

(u) *Edden v. Read*, 3 Camp. 338.

(x) *Stephens v. Badcock*, 3 B. & Ad. 354.

(y) *Bamford v. Shuttleworth*, 11 A. & E. 926 ; and see *Hurley v. Baker*, 16 M. & W. 26.

the sale going off for want of title in Stott, as they received the money as *his* agents, and to account to him. And Coleridge, J., said that payment over of the deposit was immaterial. The moment the money was in the defendant's hands it was in Stott's hands.

Cases against
revenue
officers.

Whitbread v.
Brooksbank.
Campbell v.
Hall.

Atlee v.
Buckhouse.

And so it has been held (z), that an action for money had and received would not lie against a revenue officer for an over-payment; though, in a subsequent case (a), where the duty paid remained in the hands of the collector not paid over, with the consent of the attorney-general, for the express purpose of trying the validity of imposing the duty, the Court did not raise any objection to an action for money had and received against the collector. But in a more recent case (b) it was held, that the action would not lie against the receiver-general of excise, to recover duties said to have been overpaid to him, inasmuch as the money was paid to him for the purpose of being paid over pursuant to Act of Parliament, and it was not shown that it remained in his hands till he had notice to retain it. And the Court said that, unless the contrary were proved, they would presume the money had been applied by a public officer, as it was his duty to apply it.

Servant not
liable if he
has paid the
money to his
master.

The rule exempting a clerk or other servant from responsibility to third persons for money *rightfully* received on account of his master, applies *à fortiori* where the money has been *paid over* by such clerk to his master (c). In that case, even though the money was originally paid by mistake, the clerk paying it over to his master does no wrong. It was paid to him for the purpose of being paid over, and he has effected that purpose, and cannot again be called upon to account for

(z) *Whitbread v. Brooksbank*, Cowp. 69; and see *Greenway v. Hurd*, 1 T. R. 553, where it appeared that the money had been paid over before action brought.

(a) *Campbell v. Hall*, Cowp. 205.

(b) *Atlee v. Buckhouse*, 3 M. & W. 633.

(c) *Owen v. Crook*, (1895) 1 Q. B. 265. It was upon this ground that a mandamus was refused in *R. v. Shaw*, 5 T. R. 549, see *per* Patteson, J., in *R. v. Jeyes*, 3 A. & E. 424.

the money, even though his master has no right to retain it. In an old case (*d*), therefore, where the defendant, who was a clerk of the South Sea Company, received from the plaintiff 600*l.* on account of the third subscription, and by mistake never entered it in the book, but paid it over to the company, Pratt, C. J., ruled that no action would lie against him at the suit of the plaintiff. And in a subsequent case (*e*), Lord Mansfield said:—

Cary v.
Webster.

“In general, the principle of law is clear, that if money be mispaid to an agent expressly for the use of his principal, and the agent has paid it over, he is not liable in an action by the person who mispaid it, because it is just that one man should not be a loser by the mistake of another, and the person who made the mistake is not without redress, but has his remedy over against the principal.”

Upon this principle it was held (*f*), that an action for money had and received would not lie against a churchwarden to recover back dues which had been paid to him, but which he had paid over to the treasurer of the trustees of the chapel. And similar principles have been acted on in several subsequent cases, some of which are referred to in the note (*g*).

Horsfall v.
Handley.

The mere passing money in account by an agent without any fresh credit given to, or bills accepted on account of, his principal, is not, however, equivalent to payment over (*h*), that is, if the account may be considered as still open. But if the agent, having a claim against his principals, transmit to them an account in which, giving credit for the amount received, he debits them with the amount of his claim and strikes a balance in their favour, and afterwards in a subsequent account gives them credit for this balance, which accounts are all adopted and agreed to by the principals; the account

Passing
money in
account not
equivalent to
payment,

unless ac-
count settled.

(*d*) *Cary v. Webster*, Str. 480.

(*e*) *Buller v. Harrison*, Cowp. 565, *post*, p. 357.

(*f*) *Horsfall v. Handley*, 8 Taunt. 136.

(*g*) *Greenway v. Hurd*, 4 T. R. 553; *Coles v. Wright*, 4 Taunt. 198; *Tope v. Hockin*, 7 B. & C. 101; *Atlee v. Backhouse*, 3 M. & W. 633; *White v. Bartlett*, 9 Bing. 378; *Ireland v. Thomson*, 4 C. B. 149.

(*h*) *Buller v. Harrison*, Cowp. 565; *McCarthy v. Colvin*, 9 A. & E. 607.

then becomes settled, and the transaction is equivalent to payment over of the money (i).

Servant obtaining money wrongfully cannot discharge himself by payment to his master.

And the doctrine that the receipt of a servant or agent is the receipt of his master or principal, does not apply to the cases of a servant who is a *wrongdoer*, so as to discharge him (k). If, therefore, a servant acting illegally or wrongfully, gets money into his hands, he cannot defend himself from an action at the suit of the party legally or rightfully entitled to it, on the ground that he acted merely as the agent of his master, and has paid over the money to him (l). No one but the person legally entitled to the money can give a discharge for it, and until it is paid to him, the servant or agent is liable to be sued by him for it; provided he is not prevented from suing by the rule "*in pari delicto potior est conditio defendentis*" (m).

Miller v. Aris.

This was decided in *Miller v. Aris* (n), which was an action brought by the plaintiff, who had been a prisoner in the Coldbath-fields Prison, against the governor of the prison, to recover a sum of money paid by the plaintiff for lodging, while he was confined as a prisoner in that

(i) *Holland v. Russell*, 32 L. J., Q. B. 297; *Newall v. Tomlinson*, L. R., 6 C. P. 405.

(k) Nor can payment by the servant be considered payment by the master, so as to expose him to the application of the maxim afterwards mentioned in the text, "*in pari delicto potior est conditio defendentis*." And therefore, where the plaintiff's clerk received money from his customers, and paid it to the defendants, upon the chances of the coming up of tickets in the State Lottery of 1772, contrary to the Lottery Act of that year, it was held by Lord Mansfield that the plaintiff might recover the money from the defendants: *Clark v. Shee*, Cowp. 197; and see *Corking v. Jarrard*, 1 Camp. 37, as quoted by Park, J., in *Abbotts v. Barry*, 2 Brod. & B. 371. Where the receipt of money by both master and servant is illegal, the latter is not liable to an action for money had and received at the suit of the former; *McGregor v. Lowe*, Ry. & M. 57; *Nicholson v. Gooch*, 25 L. J., Q. B. 137.

(l) This is strongly illustrated by *Shartland v. Meldon*, 5 Hare, 469, where it was held by Wigram, V.-C., that the agent of an executor *de son tort*, collecting the assets, knowing them to belong to the testator's estate, and that his principal was not the legal personal representative, made himself personally liable as executor *de son tort*, notwithstanding he had duly accounted for his receipts to his principal. This case was explained in *Sykes v. Sykes*, L. R., 5 C. P. 113.

(m) As the plaintiff was in *Goodall v. Lowndes*, 6 Q. B. 461; and see *Smith v. Bromley*, 2 Doug. 695; *Williams v. Hedley*, 8 East, 378; *Atkinson v. Denby*, 30 L. J., Ex. 362.

(n) 3 Esp. 232; Selw. N. P. 103.

prison, and which sum exceeded the amount allowed by the prison regulations. On behalf of the defendant it was contended that he was not liable, as he had accounted at the sessions to the county for all the sums received on account of the gaol, but he was nevertheless held liable, Lord Kenyon saying that *Sadler v. Evans (o)*, and such cases, did not apply, where there is corruption in the foundation of the contract, or it is bottomed in oppression or immorality.

And so a sheriff's officer was held liable to refund to the plaintiff a sum of money which he had illegally extorted from him, under colour of a warrant from the sheriff; and it was held to be no defence that the defendant had paid the money over to the sheriff, as the defendant acted illegally in receiving the money, which could not, therefore, have been paid to him for the purpose of being paid over to the sheriff (*p*).

So, where a parish clerk extorted illegal fees, *colore officii*, it was held that the plaintiff might recover them back from *him*, and need not sue the rector, for whom they were said to have been received (*q*).

Neither does the doctrine above-mentioned apply to cases in which a servant or agent gets money into his hands *by means of a trespass or other tort*, committed by the orders of or in company with his master or principal. For all persons concerned in a tort are principals, and as the party injured might bring his action against the servant for damages sustained in consequence of his wrongful act, he is allowed to waive his right to proceed in that form of action, and sue for the money received by the wrongdoer. Upon this ground, where (*r*) the

Miller v. Aris.

Snowdon v. Davis.

Steele v. Williams.

Nor where he obtains the money by means of a trespass or other tort.

(o) 4 Burr. 1985, *ante*, p. 350.

(p) *Snowdon v. Davis*, 1 Taunt. 359; see *Smith v. Sleep*, 12 M. & W. 585; *Valpy v. Manley*, 1 C. B. 594; *Wakefield v. Newbon*, 6 Q. B. 276; *Davies v. Vernon*, 6 Q. B. 443; *Oates v. Hudson*, 6 Exc. 346; see also *Parker v. Bristol and Exeter Railway Co.*, 6 Exc. 705; *Townson v. Wilson*, 1 Camp. 396; *Chappell v. Poles*, 2 M. & W. 867.

(q) *Steele v. Williams*, 8 Exc. 625.

(r) *Tugman v. Hopkins*, 4 M. & G. 389; and see *Sharland v. Mildon*, 5 Hare, 469, *ante*, note (l); *Edwards v. Hodding*, 5 Taunt. 815; *Neate v. Harding*, 6 Exc. 349.

*Tugman v.
Hopkins.*

defendant by direction of his father, who claimed to be executor of the plaintiff's wife deceased, went to her lodgings and took a large sum of money from a bureau, which he said belonged to his father as executor, and which he paid over to him accordingly: the defendant was held liable to an action for the money at the suit of the plaintiff, although it was contended that he merely acted as agent to his father, against whom the action should have been brought. And Tindal, C. J., said,—

"The defendant was a wrongdoer in taking the money, and would have been liable to the plaintiff in trespass. The plaintiff, however, waives the tort and sues the defendant for money had and received: and the defendant cannot relieve himself from liability by paying over the money to another party, as he might have done if the original taking had been lawful. The circumstance distinguishes the present case from *Stephens v. Badcock* (s): for there the defendant received the money as agent for a party who was entitled to receive it, whereas here the receipt was altogether wrongful, and it must be taken with all its consequences."

As to servant's
liability to
third persons
intervening
before pay-
ment to his
master.

But a clerk or other servant or agent who has received money on account of his master, and *has not paid it* over to him before receiving notice not to do so, from or on behalf of the person who paid it, may be liable to refund the money, and cannot shelter himself from such liability under the maxim *respondent superior*, if the circumstances of the case are such that, had the money been paid over to the master, *he* would have had no defence to an action to recover it: as in such case the servant, if obliged to pay the money over to the person entitled to it, would have a good defence to any action brought against him by his master, and would not be estopped from disputing his title to the money.

*Cary v.
Webster.*

Thus, in *Cary v. Webster* (t), it was said by Pratt, C. J., that if the defendant had not paid the money over, the plaintiff would have had his option either to charge him or the company: as in the common case of payment to a goldsmith's servant, who does not carry it to the account of his master, the party has an election to go

(s) 3 B. & Ad. 354; see this case, *ante*, p. 351.

(t) Str. 480, *ante*, p. 353.

against either: he may charge the servant, because, till the money is paid over, the servant receives it to his own use; or he may pass by the servant and make his demand upon the master, because the payment to the servant is made in confidence of the credit given him by the master.

So, in an action (*u*) brought by the plaintiff, an underwriter, to recover back from the defendant, who was agent for the insured, Messrs. L. & S., resident at New York, a sum paid by the plaintiff upon a loss, supposed to be fair, but which turned out to be foul; the defendant had passed the whole sum in his account with Messrs. L. & S., and given credit to them for it against a sum in which they stood indebted to him, but had accepted no fresh bills nor given any fresh credit to his principals, and had not paid the money over to them: it was held that the mere placing the money to the credit of the principals was not equivalent to paying it over; and that the defendant was liable to refund the money to the plaintiffs. In delivering judgment, Lord Mansfield said,—

“In general, the principle of law is clear, that if money be mispaid to an agent expressly for the use of his principal, and the agent has paid it over, he is not liable in an action by the person who mispaid it, because it is just that one man should not be a loser by the mistake of another, and the person who made the mistake is not without redress, but has his remedy over against the principal. On the other hand, it is just that as the agent ought not to lose he should not be a gainer by the mistake. And, therefore, if after the payment so made to him, and before he has paid the money over to his principal, *the person corrects the mistake*, the agent cannot afterwards pay it over to his principal without making himself liable to the real owner for the amount. But the present case turns upon this, that the agent was precisely in the same situation at the time the mistake was discovered as before.”

So where (*x*) it appeared that the defendant had received a bar of silver from his correspondent at Gibraltar, and sold it to the plaintiff at a price calculated with reference

(*u*) *Buller v. Harrison*, Cowp. 565. See *Owen v. Cronk*, (1895) 1 Q. B. 265.

(*x*) *Cox v. Prentice*, 3 M. & S. 344. It may be observed of both *Buller v. Harrison* and *Cox v. Prentice*, that the principal was a *foreigner*.

*Cox v.
Prentice.*

to the number of ounces, which, on assay, it was supposed to contain, and it turned out afterwards that it contained fewer ounces than had been supposed; the plaintiff was held entitled to recover from the defendant the money overpaid to him, as he had not *paid it over* to his principal, although he had forwarded an account to him, in which he had credited him with the full sum, but which was still unsettled. And Lord Ellenborough, C. J., said,—

"I take it to be clear that an agent who receives money for his principal is liable as a principal, so long as he stands in his original situation, and until there has been a change of circumstances by his having paid over the money to his principal, or done something equivalent to it. Here it is admitted that no money has been paid over by the defendant to his principal, nor has there been any other thing done by him to create a change of circumstances. The only question then is, whether the action lies against the defendant, considering it as if it were an action against the principal."

*Murray v.
Mann.*

So in the following case (*y*) a principal was held not entitled to set off against a debt due from him to his agent a sum of money received by the agent on account of his principal, but returned by him to the person who paid it before action brought, under circumstances which were held to justify the agent in returning the money. It was an action by a livery-stable keeper for the keep of a horse belonging to the defendant, to which the defendant pleaded a set-off for money received by the plaintiff for the use of the defendant. The horse had stood some time in the plaintiff's stables, when, at length, the plaintiff sold it with a warranty for 125*l.*, which sum the defendant claimed to set off against the plaintiff's demand. But it appeared that the horse, not answering the warranty, had been returned by the purchaser, to whom the plaintiff had returned his money before the action was brought; and it was held that the plaintiff was justified in returning the money, which could not, therefore, be set off against his claim for the keep of the horse. On behalf of the defendant it was contended that

(*y*) *Murray v. Mann*, 2 Exc. 538.

the plaintiff, an agent, could not set up his own fraud in giving a false warranty, by which he was obliged to return the money, against his principal, the defendant; but, said Lord Wensleydale,—

*Murray v.
Mann.*

“The answer is, that the principal never had a right to the 125*l.*, except by the act of his agent in making a contract which was defeasible by reason of fraud. It is true that fraud does not make the contract actually void, but only voidable at the election of the party; but the moment the purchaser chose to declare it void, *the price was recoverable back from the plaintiff*, and it ceased to be money in his hands received for the use of the defendant. I am, therefore, clearly of opinion that the set-off was defeated by the proof of fraud. The plaintiff does not, in truth, set up his own fraud against the defendant, but says, ‘I only received that money subject to a defeasance, which has taken effect.’”

A servant may also, in some cases, be liable to an action at the suit of a third person for non-payment of money which he has received from his master with orders to pay it to such third person. But in order to render him liable to such an action it is not sufficient that he should have received the money from his master with orders to pay it to a particular person, he must have done some act amounting to a specific *appropriation* of the money to the use of that person; he must have assented to hold it to his use, otherwise there is no privity between them, and the servant is only responsible to his master (*z*), and such assent must of course be before action brought.

When servant liable to third person for money received from his master to be paid to them.

This position is well illustrated by the case of *Howell v. Batt (a)*. That was an action for money had and received. The plaintiff was a joint proprietor of a coach running from Exeter to London, and the defendant was office-

*Howell v.
Batt.*

(*z*) Paley on Ag. 394; see *Williams v. Everett*, 14 East, 582; *Lilly v. Hays*, 5 A. & E. 548; and other cases cited, 1 Wms. Saund. 210 *b*, note. And see *Gidley v. Lord Palmerston*, 3 Brod. & B. 275, where the secretary at war was held not liable to an action at the suit of a retired clerk at the war-office for his retired allowance, although the secretary at war had received the money applicable to such allowance. See also *Moore v. Bushell*, 27 L. J., Exe. 3; *Hill v. Royds*, 8 Eq. 290.

(*a*) 5 B. & Ad. 504; see *Baron v. Husband*, 4 B. & Ad. 611; *Henderson v. Rothschild*, 33 Ch. D. 459; affirmed 56 L. J., Ch. 471.

*Howell v.
Batt.*

keeper and servant to C., the proprietor at Exeter. The defendant used, in his capacity of office-keeper, at stated intervals, to make up the share-bills of the coach, and take sums of money from a balance of C.'s, which he had in hand, and send them to the proprietors as their shares of the profits. On one occasion 23*l.* were due to the plaintiff, and the defendant made up a packet purporting to contain that sum, and sent it to the plaintiff. The packet only contained 20*l.*, and the action was brought for the difference. No sum of money was expressly given to the defendant by C. for the plaintiff, but after the action was brought the defendant admitted that he had had the money of C., but said he had sent it to the plaintiff. The plaintiff was nonsuited on the ground that there was no privity between him and the defendant; and a rule to set aside the nonsuit was afterwards refused, Parke, J., observing, "If it had been proved that the defendant had, as it were, attorned to the plaintiff and agreed to hold the money for his use, and not subject to the direction of C., the case would have been different."

IN CASES OF TORT—CRIMINALITER.

Master's
liability does
not involve
servant's
exemption.

We have seen in the preceding chapter that a master is in many cases liable to answer criminally for the acts of his servants. Such liability on the part of the master does not, however, by any means, always involve the exemption of the servant from a similar liability to answer *criminaliter* for his own acts, although performed by him in the discharge, or supposed discharge, of his duty to his master, or in obedience to his master's commands. In criminal matters it is a general rule that every person must answer for his own acts, and the command of no person can excuse an illegal act. A servant, therefore, is not, generally speaking, excused from liability to answer criminally for any violation of the law which he may commit, on the ground that he

Servant
generally
responsible,
criminaliter,

was only acting in obedience to his master's commands (*b*). This is so obviously the case in regard to offences which are *mala in se*, that no more need be said upon the subject. But where the illegal act charged is merely *malum prohibitum*, the fact that the servant was acting in obedience to his master's commands, would be strong evidence to rebut that *primâ facie* inference of the existence of a vicious mind, which generally arises from the mere doing an illegal act; and in such cases it may sometimes happen that in *this way* the command of the master may, in effect, exempt the servant from criminal responsibility for the consequences of illegal acts done in obedience to his master's orders.

for his own acts.

Mala in se.

Aliter, sometimes in cases of *malum prohibitum*.

Thus, where (*c*) on the trial of an indictment under 7 & 8 Geo. 4, c. 30, s. 6, for maliciously obstructing an airway belonging to a mine, with intent to hinder and delay the working of the mine, it appeared that the defendants had acted under the orders of P., the lessee of an adjacent mine, and it was contended by the counsel for the prosecution, that although the defendants were acting under P.'s orders, still that an order to do wrong afforded no justification; Lord Abinger, C. B., inquired, "If a servant did this by his master's order, and supposing *bonâ fide* that the master had a right to order it to be done, would it not be too much to say that the servant is answerable as a felon for doing the thing maliciously when the malice, if there is any, is his master's, and not his own?" Upon which, the counsel for the prosecution said, "Suppose a master ordered his servant to shoot a man, that would be no excuse for the servant if he did it." "But," said Lord Abinger, "that is an act which is *malum in se*. But if a master having a doubt or no doubt of his own rights, sets his servants

R. v. James.

(*b*) 1 Hawk. P. C. 3; 1 Hale, P. C. 44, 516; 4 Blackst. Com. 28. In *R. v. Parr*, 2 M. & Rob. 346, both master and servant were jointly indicted for receiving stolen goods.

(*c*) *R. v. James*, 8 C. & P. 131. And see *R. v. Bleasdale*, 2 Carr. & K. 768; where Erle, J., said, "If a man does by means of an innocent agent an act which amounts to a felony, the employer, and *not the innocent agent*, is the person accountable for that act."

R. v. Jones. to build a wall in a mine, they would, if he proved to have no right, be all liable in an action of trespass, but it would not be felony in the servants. The rules respecting acts *mala in se* do not apply. If a master told his servant to shoot a man, he would know that that was an order he ought to disobey. But if the servant *bonâ fide* did these acts, I think they do not amount to an offence within this statute. If a man claims a right which he knows not to exist, and he tells his servants to exercise it, and they do so, acting *bonâ fide*, I am of opinion that that is not felony in them even if, in so doing, they obstruct the airway of a mine. What I feel is this, that if these men acted *bonâ fide* in obedience to the orders of a superior, conceiving that he had the right which he claimed, they are not within this Act of Parliament. But if either of these men *knew* that it was a malicious act on the part of his master, I think then that he would be guilty of the offence charged." The prisoners were acquitted.

Unqualified
servant
sporting with
qualified
master.

Where a servant who was not qualified went out coursing with a master who was qualified, it was held that the servant could not be convicted for using dogs to kill and destroy game (*d*). And so an unqualified person who set traps to destroy game by order of his master, who was qualified, was held not liable to the penalties imposed by 5 Ann. c. 14 (*e*). But where an unqualified servant went out shooting with a master who was qualified, and fired a gun and shot game for him, he was held liable to the penalty imposed by 5 Ann. c. 14, for keeping and using a gun to kill game without a qualification (*f*), Bayley, J., saying,—

"The principle upon which the two former cases proceeded was, that the using the greyhounds was the act of the owner and master, and not

(*d*) *R. v. Taylor*, 15 East, 160; see also *Lewis v. Taylor*, 16 East, 49; *Hudson v. Foot*, 10 Ir. C. L. R. 509.

(*e*) *Walker v. Mills*, 2 Br. & B. 1; see also *Spicer v. Barnard*, 28 L. J., M. C. 176; *Padwick v. King*, 29 L. J., M. C. 42, where the right of a tenant to kill rabbits was held to justify his servants in so doing *by his direction*.

(*f*) *Ex parte Sylvester*, 9 B. & C. 61.

of those who accompanied him. So, also, the trap being set by the master's orders and in his presence, must be taken to have been set by him. But we cannot say that of using the gun, neither his hand nor his skill was applied to it. If we were to hold that the firing of the gun was the act of the master, he might in the same manner use twenty guns at the same time. I think we must consider the gun to have been used by the person who actually fired it, and, if so, the cases cited are inapplicable, and there can be no doubt that S. was properly convicted."

The Pharmacy Act, 1868 (31 & 32 Vict. c. 121), imposes a penalty, by sect. 15, on any person who shall "sell" poisons without being a duly registered chemist, and under this section an unregistered assistant of a duly registered chemist has been held liable (*g*).

Pharmacy Act,
1868.

So, too, under the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), a servant of a dairy company has been convicted under sect. 6, which imposes a penalty on any person who shall "sell" to the prejudice of the purchaser, any article of food not of the nature, substance and quality of the article demanded by the purchaser (*h*).

Sale of Food
and Drugs
Act, 1875.

But a servant selling liquor, the property of his master, by his master's order, does not come within sect. 3 of the Licensing Act, 1872 (35 & 36 Vict. c. 94), by which it is forbidden that any person shall sell by retail any intoxicating liquor without being duly licensed, and a penalty is imposed for a breach of the section (*i*).

Licensing Act,
1872.

The Inland Revenue Act, 1867 (30 & 31 Vict. c. 90), provides, by sect. 17, that "if any person shall solicit, take or receive any order for spirits, wine or other article for the dealing in, retailing or selling, whereof an excise licence is by law required, without having in force a proper excise licence authorizing him so to do," shall forfeit certain penalties; but a proviso excepts "a *bonâ fide* traveller taking orders for goods which his employer is duly licensed to deal in or sell." A traveller is not necessarily excluded from relying upon this proviso by

Inland
Revenue Act,
1867.

(*g*) *Pharmaceutical Society v. Wheldon*, 24 Q. B. D. 683. But an agent who simply receives an order and forwards it to his principal for acceptance is not a seller within this section; *Pharmaceutical Society v. White*, (1901) 1 K. B. 601.

(*h*) *Hotchin v. Hindmarsh*, (1891) 2 Q. B. 181.

(*i*) *Williamson v. Norris*, (1899) 1 Q. B. 7.

reason merely that he has a regular office where he receives orders for spirits, and from which he forwards such orders to his employers (*j*).

But a secretary to a watch club, who received from the members of the club subscriptions which he forwarded to a watchmaker holding an excise licence to deal in plate, was held not to come within the proviso, he himself having no excise licence, and being paid by the watchmaker a commission upon the amount he collected (*k*).

Pedlars Act,
1871.

The Pedlars Act, 1871 (34 & 35 Vict. c. 96), which enacts that no person shall act as a pedlar without having a certificate, contains an exemption in sect. 23 in favour of "commercial travellers or other persons selling or seeking orders for goods, wares or merchandize to or from persons who are dealers therein and who buy to sell again, or selling or seeking orders for books as agents authorized in writing by the publishers of such books."

Hawkers Act,
1888.

By the Hawkers Act, 1888 (51 & 52 Vict. c. 33), s. 5, a servant may travel with his master's licence and trade for his master's benefit.

Thames
Watermen's
Act.

It has also been held, that a servant is liable to the penalties imposed by the Thames Watermen's Act, upon any person not being a freeman of the Watermen's Company, who shall act as a waterman, &c., on the Thames, although he was working for and paid by the owner of the barge, at a fixed weekly salary (*l*).

Acting as
broker with-
out licence.
Scott v.
Cousins.

C. was the book-keeper and accountant, and I. the secretary of a company incorporated and registered under the Joint Stock Companies Act, 1862, for buying and selling on behalf of other persons shares and stocks, &c. There was no evidence that any of the directors, manager or other person connected with the company was a duly licensed broker. C. on one occasion bought,

(j) *Stuckbury v. Spencer*, 55 L. J., M. C. 141.

(k) *Killick v. Graham*, (1896) 2 Q. R. 196

(l) *R. v. Tibble*, 4 E. & B. 888; *Skittrell v. Showell*, 59 L. J., M. C. 26.

and I. on another sold, stock for a customer, and signed the bought and sold notes "p. pro. manager," I. adding "secretary" after his signature. It was held that both C. and I. were liable to penalties under 57 Geo. 3, c. lx., s. 2, for acting as brokers without a licence (*m*).

Scott v. Cousins.

Again, a sheriff's officer has been held liable to an attachment for extortion (*n*).

Attachment against sheriff's officer for extortion.

And a servant who managed a place of public resort was convicted for aiding and abetting his master in harbouring prostitutes under 11 & 12 Vict. c. 43, s. 5 (*o*).

Servant aiding and abetting master.

Where a shopman to a jeweller was indicted for obtaining money by false pretences, he having sold a chain, &c., which was hung in the window, marked "fine gold," when it was not gold, Alderson, B., said the indictment would not lie without showing guilty knowledge on the part of the defendant, who was merely acting as shopman, and the jury having found that there was no guilty knowledge, the prisoner was acquitted.

Shopman selling as "fine gold" what was not.

"If," said the learned Baron, "the master had been indicted, the evidence might apply, because the jury would infer that he was aware of the quality of the articles that he was selling, but it was different in the case of a shopman. Although, undoubtedly, a gross fraud, it did not constitute an indictable offence" (*p*).

There are also many cases which may properly be mentioned in this place, but to which it is unnecessary to advert at any length, as they scarcely come within the scope of the present work, in which servants may be liable to indictment for culpable neglect of the duty undertaken by them towards their employer, where that duty also involved a duty to the public. Such, for instance, as the driver of a carriage or a captain of a vessel, who by negligent driving or navigation, causes the death of any person. In such cases, though the master may be liable in a civil action for the consequences of

Servant liable to indictment for breach of duty to his master which involved public duty.

(*m*) *Scott v. Cousins*, L. R., 4 C. P. 177. This Act was repealed by 47 & 48 Vict. c. 3.

(*n*) *Masters v. Lowther*, 11 C. B. 948.

(*o*) *Wilson v. Stewart*, 32 L. J., M. C. 198.

(*p*) *R. v. Lamade*, Centr. Cr. Court, Feb. 4th, 1853.

his servant's negligence, yet the servant must answer *criminally* for his own personal negligence (*q*).

R. v. Haines. In a case, therefore, in which the ground bailiff of a mine, whose duty it was to cause proper air-headings to be put up to prevent the accumulation of noxious gases, neglected to do so, and an explosion of fire-damp took place, which killed a person, for whose manslaughter he was indicted: Maule, J., in summing up, told the jury that if they were satisfied that it was the ordinary and plain duty of the prisoner to have caused an air-heading to be made, and that a man using reasonable diligence would have had it done, and that by the omission the death of the deceased occurred, they ought to find the prisoner guilty of manslaughter (*r*). But it has been held that an engineer, under similar circumstances, could not be convicted of manslaughter upon an indictment which did not allege a duty in him which he had neglected to perform (*s*).

R. v. Hughes. It would seem, however, to be sufficient to allege *facts* from which the law would infer such duty. Thus where a banksman, whose duty it was to place a stage on the mouth of a shaft to receive a loaded truck run down to it on a tramway, neglected to place the stage, in consequence of which the truck fell down the shaft and killed a workman, the banksman was held guilty of manslaughter (*t*). In that case Lord Campbell said,—

“It was the duty of the prisoner to place the stage on the mouth of the shaft. The death of the deceased was the direct consequence of the omission of the prisoner to perform this duty. If the prisoner, of malice

q See *R. v. Allen*, 7 C. & P. 153; *R. v. Green*, *ib.* 156, where the captains of steamers were indicted for the manslaughter of persons killed by being run down by the steamers; but were acquitted, as there was no proof of any *personal* act; and see *R. v. Taylor*, 9 C. & P. 672; see also *R. v. Ledger*, 2 Fost. & F. 857 (station-master); *R. v. Trainer*, 4 F. & F. 105 (engine-driver and fireman); *R. v. Birchall*, 4 F. & F. 1087; *R. v. Gray*, 1 F. & F. 1098.

r *R. v. Haines*, 2 Carr. & K. 368, the prisoner was acquitted. See also *R. v. Pocock*, 17 Q. B. 34. The neglect of duty must be *immediately* connected with the death.

s *R. v. Barrett*, 2 C. & K. 343. See the form of the indictment in the note to *R. v. Haines*, *ubi supra*.

t *R. v. Hughes*, 26 L. J., M. C. 202.

afterthought, and with the premeditated design of causing the death of the deceased, had omitted to place the stage on the mouth of the shaft, and the death of the deceased had thereby been caused, the prisoner would have been guilty of murder. According to the common law form of an indictment for murder by reason of the omission of a duty, it was necessary that the indictment should allege that it was the duty of the prisoner to do the act, or to state facts from which the law would infer this duty (*u*). But it has never been doubted that if death is the direct consequence of the malicious omission of the performance of a duty (as of a mother to nourish her infant child), this is a case of murder. If the omission was not malicious and arose from negligence only, it is a case of manslaughter. It has been held that to make the captain of a vessel guilty of manslaughter in causing a person to be drowned in running down a boat, proof of a mere omission on his part to do the whole of his duty is not sufficient (*x*). But there is no authority for the position that without an act of commission there can be no manslaughter; and, on the contrary, the general doctrine seems well established that what constitutes murder being by design and of malice prepense constitutes manslaughter when arising from culpable negligence."

R. v. Hughes.

Moreover, many instances are to be found in the books of cases in which servants and workmen have been joined with their masters and employers in indictments for nuisances; some of which, by way of example, are referred to in the note (*y*).

Indictments
for nuisances

The performance of their duties to their masters by servants of railway companies are enforced by Act of Parliament. Thus in the Railway Regulation Act, 1840 (3 & 4 Vict. c. 97), there is, for the protection of the public, inserted a provision for the punishment of servants of railway companies who are guilty of misconduct. By that Act it is enacted,—

Punishment
of persons
employed on
railways
guilty of
misconduct.

Sect. 13. It shall be lawful for any officer or agent of any railway company, or for any special constable duly appointed, and all such persons as they may call to their assistance, to seize and detain any engine-driver, guard, porter or other servant in the employ of such company who shall be found drunk while employed upon the railway, or commit any offence against any of the bye-laws (*z*), rules or regulations

(*u*) *R. v. Edwards*, 8 C. & P. 611; see 3 Russ. on Cr. (6th ed.), 95.

(*x*) *R. v. Allen*, 7 C. & P. 153.

(*y*) *R. v. Pease*, 4 B. & Ad. 30; *R. v. Scott*, 3 Q. B. 543; *R. v. Charlesworth*, 16 Q. B. 1012; *R. v. Betts*, 16 Q. B. 1022; see *R. v. Sharpe*, 3 Railw. Cas. 33.

(*z*) As to the making of bye-laws, see the Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16), ss. 127 *et seq.*, and the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 108 *et seq.*

3 & 4 Vict.
c. 97, s. 13.

of such company, or shall wilfully, maliciously or negligently do or omit to do any act whereby the life or limb of any person passing along or being upon the railway belonging to such company or the works thereof respectively shall be or might be injured or endangered, or whereby the passage of any of the engines, carriages or trains shall be or might be obstructed or impeded, and to convey such engine-driver, guard, porter or other servant so offending, or any person counselling, aiding or assisting in such offence with all convenient despatch before some justice of the peace for the place within which such offence shall be committed without any other warrant or authority than this Act; and every such person so offending and every person counselling, aiding or assisting therein as aforesaid, shall, when convicted before such justice as aforesaid (who is hereby authorized and required, upon complaint to him made upon oath, without information in writing, to take cognizance thereof and to act summarily in the premises) in the discretion of such justice be imprisoned, with or without hard labour, for any term not exceeding two calendar months, or in the like discretion of such justice shall for every such offence forfeit to her Majesty any sum not exceeding ten pounds, and in default of payment thereof shall be imprisoned with or without hard labour as aforesaid (*a*).

Justice of the
peace em-
powered to
send any case
to quarter
sessions.

Sect. 14. Provided always (*b*), that (if upon the hearing of any such complaint he shall think fit) it shall be lawful for such justice, instead of deciding upon the matter of complaint summarily, to commit the person or persons charged with such offence for trial for the same at the quarter sessions for the county or place wherein such offence shall have been committed, and to order that any such person so committed shall be imprisoned and detained in any of her Majesty's gaols or houses of correction in the said county or place in the meantime, or to take bail for his appearance, with or without sureties in his discretion; and every such person so offending and convicted before such Court of quarter sessions as aforesaid (which said Court is hereby required to take cognizance of and hear and determine such complaint), shall be liable, in the discretion of such Court, to be imprisoned, with or without hard labour, for any term not exceeding two years.

Extended by
5 & 6 Vict.
c. 55, s. 17.

By the Railway Regulation Act, 1842 (5 & 6 Vict. c. 55) (*c*), after reciting the foregoing provision, and that it was expedient to extend the same, it is enacted,—

Punishment
of persons
employed on
railways
guilty of
misconduct.

Sect. 17. It shall be lawful for any officer or agent of any railway company, or for any special constable duly appointed, and all such

(*a*) The rest of the section was repealed by 47 & 48 Vict. c. 43. See the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49).

(*b*) See sect. 16 as to obstructing officers of the company.

(*c*) See also the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 124, 125, which makes the owners of engines, &c., brought on the railway liable to the company for damage done by the servants of such owners, but enables the owners to recover from their servants in the same way as the company recover from the owners.

persons as they may call to their assistance, to seize and detain any engine-driver, waggon-driver, guard, porter, servant or other person employed by the said or by any other railway company, or by any other company or person in conducting traffic upon the railway belonging to the said company, or in repairing or maintaining the works of the said railway, who shall be found drunk while so employed upon the said railway; who shall commit any offence against any of the bye-laws (*d*), rules or regulations of the said company; or who shall wilfully, maliciously or negligently do, or omit to do, any act whereby the life or limb of any person passing along or being upon such railway, or the works thereof respectively, shall be or might be injured or endangered; or whereby the passage of any engines, carriages or trains shall or might be obstructed or impeded, and to convey such engine-driver, guard, porter, servant or other person so offending, or any person counselling, aiding or assisting in such offence, with all convenient dispatch, before some justice of the peace for the place within which such offence shall be committed, without any other warrant or authority than this Act; and every such person so offending, and every person counselling, aiding or assisting therein as aforesaid, shall, when convicted upon the oath of one or more credible witness, or witnesses, before such justice as aforesaid (who is hereby authorized and required upon complaint to him made upon oath, without information in writing, to take cognizance thereof, and to act summarily in the premises), in the discretion of such justice be imprisoned, with or without hard labour, for any term not exceeding two calendar months; or, in the like discretion of such justice, shall, for every such offence, forfeit to Her Majesty any sum not exceeding ten pounds, and in default of payment thereof shall be imprisoned, with or without hard labour, as aforesaid." [for such period not exceeding two calendar months, as such justice shall appoint, such commitment to be determined on payment of the amount of the penalty, and every such penalty shall be returned to the next ensuing court of quarter sessions in the usual manner (*e*).]

Clauses are also to be found in various Acts of Parliament subjecting clerks and servants to punishment for offences committed against those Acts.

Thus the Larceny Act, 1861 (*f*), which by sect. 78 makes it a misdemeanor for factors or agents to obtain advances on the property of their principals for the use of any person other than such principals, also enacts in the same section that:—

Factor's clerks assisting them in obtaining for their use advances on property of principal.

"Every clerk or other person who shall knowingly and wilfully act and assist in making any such consignment, deposit, transfer or delivery,

(*d*) *Supra*, p. 367, note (*z*).

(*e*) The words in brackets in *this* Act were (probably by an oversight) *not* repealed by 47 & 48 Vict. c. 43.

(*f*) 24 & 25 Vict. c. 96, s. 78.

or in accepting or procuring such advance as aforesaid, shall be guilty of a misdemeanor."

and subject to the same punishment as their masters.

Public officers
of any com-
pany fraudu-
lently appro-
priating
property.

By sect. 81. "Whosoever being a director, member or public officer of any body corporate or public company, shall fraudulently take or apply for his own use or benefit, or for any use or purposes other than the use or purposes of such body corporate or public company, any of the property of such body corporate or public company, shall be guilty of a misdemeanor."

or keeping
fraudulent
accounts.

Sect. 82. "Whosoever being a director, public officer or manager of any body corporate or public company shall as such, receive or possess himself of any of the property of such body corporate or public company otherwise than in payment of a just debt or demand, and shall with intent to defraud omit to make, or to cause or direct to be made a full and true entry thereof in the books and accounts of such body corporate or public company; or (sect. 83) shall with intent to defraud, destroy, alter, mutilate or falsify any book, paper, writing or valuable security, belonging to the body corporate or public company, or make or concur in the making of any false entry, or omit or concur in omitting any material particular in any book of account or other document: or (sect. 84) shall make, circulate or publish, or concur in making, circulating or publishing any written statement or account which he shall know to be false in any material particular, with intent to deceive or defraud any member, shareholder or creditor of such body corporate or public company, or with intent to induce any person to become a shareholder or partner therein, or to intrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof, shall be guilty of a misdemeanor."

or wilfully
destroying
books, &c.,

or publishing
fraudulent
statements.

Making or
accepting
bills or notes,
&c., by pro-
curation
without law-
ful authority,
felony.

Again, the Forgery Act, 1861 (24 & 25 Vict. c. 98), enacts that:—

Sect. 24. "Whosoever with intent to defraud shall draw, make, sign, accept or indorse any bill of exchange or promissory note or any undertaking, warrant, order, authority or request for the payment of money or for the delivery or transfer of goods or chattels, or of any bill, note or other security for money, by procuration or otherwise, for, in the name or on the account of any other person without lawful authority or excuse, or shall offer, utter, dispose of or put off any such bill, note, undertaking, warrant, order, authority or request so drawn, made, signed, accepted or indorsed by procuration or otherwise without lawful authority or excuse as aforesaid, knowing the same to have been so drawn, made, signed, accepted or indorsed as aforesaid, shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding fourteen years, and not less than three years, Penal Servitude Act, 1891 or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

And the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), enacts:—

Sect. 35. "Whosoever having the charge of any carriage or vehicle shall by wanton or furious driving or racing, or other wilful misconduct, or by wilful neglect, do or cause to be done any bodily harm to any person whomsoever shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the Court to be imprisoned for any term not exceeding two years, with or without hard labour."

Drivers of
carriages
injuring
persons by
furious
driving.

By the Act of 29 Car. 2, c. 7, "No tradesman, artificer, workman or labourer or other person whatsoever shall do or exercise any worldly labour, business or work of their ordinary callings upon the Lord's Day or any part thereof (works of necessity and charity only excepted)," and every person of the age of fourteen years and upwards, offending in the premises, is liable for every such offence to forfeit the sum of five shillings (*g*).

Clauses also are to be found in various other Acts of Parliament subjecting workmen and servants to penalties for offences against the Act committed whilst in the supposed discharge of their duty to their employers. Thus, in the Act for Rebuilding Westminster Bridge (*h*), there is a clause which provides that in case of damage or mischief done to the bridge by any ship, lighter, &c., through the wilful negligence of any person having the command of any such ship, lighter, &c., or any of the mariners or persons employed therein, the owner of such ship, lighter, &c., shall be answerable for the amount; and then follows a clause enacting:—

Servants or
mariners
wilfully in-
juring West-
minster
Bridge liable
to indemnify
master.

"That in case the owner of any such ship, lighter, barge, boat, float, raft or vessel shall be compelled to pay any penalty, or to make satisfaction for any damages by reason of any neglect or default done or committed by his servants or mariners, or any of them, such servants or mariners, and each and every of them, shall be liable to pay such penalty or damages (with the costs thereof) to such owner; and in case of non-payment upon

(*g*) The words "workman or labourer" are intended to cover the case of persons in the employment of others, but it is doubtful whether agricultural labourers are within this enactment: *R. v. Silvester*, 33 L. J., M. C. 79; or barber's assistants: *Palmer v. Snow*, (1900) 1 Q. B. 725.

(*h*) 16 & 17 Vict. c. 46, ss. 15, 16. There are similar clauses in the Thames Embankment Act (25 & 26 Vict. c. 93), ss. 48, 49.

demand thereof, and oath made by such owner of the payment made by him of such penalty, satisfaction, or damages, and that the same, and the costs thereof, have not been repaid to him by such servants or mariners, or any of them, although demanded (such oath to be made before any one or more justice or justices of the peace of the county or place where such penalty or satisfaction shall have been recovered), the amount thereof, provided the same shall not exceed the sum of twenty pounds, shall be recovered in the same manner as any penalty is thereby directed to be recovered."

i.e., under the provisions of the Companies Clauses Consolidation Act, 1845 (*k*).

Workmen
violating
London
Building Act,
1894.

And in sect. 200 of the London Building Act, 1894 (57 & 58 Vict. c. cxxiii.), there is a provision that if any workman, labourer, servant, or other person employed in or about any building, wilfully, and without the privity or consent of the person causing the work to be done, does anything in or about such building contrary to the provisions of that Act, he shall incur certain penalties.

Numerous other instances are to be found in the Statute Book of penalties imposed upon servants for neglect of duty to their employers.

It is no
answer in
criminal
proceedings
that person
injured or
others contri-
buted to his
injury.

A distinction of considerable importance must here be adverted to, which obtains between civil and criminal proceedings for the consequences of negligence. In civil proceedings, as we have seen, no person can recover damages against a master for the negligence of his servant if he has by his own negligence contributed to or caused the injury complained of. But in criminal proceedings the converse of that proposition is true: and it is no answer to a criminal charge, as of manslaughter, that the deceased by his own negligence or improper conduct, or by being deaf or drunk, contributed to his own death (*l*). So highly does the law value human life, that every person who has contributed to destroy it is responsible; and it does not diminish that

[*k*] 8 & 9 Vict. c. 16

[*l*] *R. v. Secunda* *l*, 2 C. & K. 230.

responsibility that others also have been guilty of negligence (*m*).

IN CASES OF TORT—CIVILITER.

It is a general rule in cases of tort, that all persons concerned in the wrong are liable to be charged as principals. It was said in *Sands v. Child* (*n*), "that the warrant of no man, not even of the king himself, can excuse the doing of an illegal act; for although the commanders are trespassers, so are also the persons who did the fact." A servant, therefore, can in no case excuse himself from liability to an action founded upon a misfeasance or positive wrong done to another person, upon the ground that he acted merely in obedience to his master's orders or for his master's benefit (*o*). Thus a surveyor to a highway board was held liable (*p*) in an action of trespass for removing the lock from a gate placed across a highway running through land occupied by the plaintiff, though in removing the lock he was only acting in pursuance of instructions given him by the board; and the fact that he was under a statutory duty to obey the orders of the board did not excuse him if in obeying their orders he did an unlawful act.

All wrong-
doers are
principals,
Sands v.
Child.

Servant
liable for
misfeasance,
though in
obedience to
his master's
orders;
Mill v.
Hawker.

(*m*) *Ibid.*; and see *R. v. Haines*, 2 C. & K. 368. But see what Willes, J., said in *R. v. Birchall*, 4 F. & F. 1087.

(*n*) 3 Lev. 352. See *Buron v. Denman*, 2 Exc. 167, cited *post*, p. 381, note (*n*).

(*o*) In *Pearson v. Graham*, 6 A. & E. 899, 902, Lord Denman, C. J., said, "It might be very doubtful whether a servant delivering goods by his master's order could be said to have converted those goods as against the assignees of his master. *Coles v. Wright*, 4 Taunt. 198, rather seems to show that he could not." The case of *Coles v. Wright*, however, seems to belong to a different class of cases, *ante*, p. 353. It was an action for money had and received, and the defendant was held not liable, as he had paid the money over to his master. And in *Pearson v. Graham* the defendant, who had received no express orders as to the goods in question, but took upon himself, under a general authority, to sell and deliver them at a time when, as it afterwards turned out, his master had committed an act of bankruptcy, was held liable to an action of trover, at the suit of his master's assignees. Any distinction between the effect of a special and a general authority from the master to the servant, upon the liability of the servant, would seem to be opposed to the cases of *Perkins v. Smith* and *Stephens v. Elwall*, afterwards cited in the text, and which cases were not cited in *Pearson v. Graham*.

(*p*) *Mill v. Hawker*, L. R., 10 Exc. 92.

*Monks v.
Dillon.*

And the engineer to a drainage board was held liable (q) to an action of trespass where certain works were being executed by a contractor pursuant to a contract with the board and under the personal superintendence of the engineer, and according to plans prepared by him. The engineer personally directed and instructed the contractor, and some of the works thus executed were executed on the plaintiff's land and were a trespass.

In *Breay v. Royal British Nurses Association* (r) the facts were as follows: The defendants were an incorporated society and published a newspaper on nursing, one of the members of the association being employed as honorary editor. In respect of an article published in this newspaper the plaintiff brought an action of libel, but he chose to sue, not the association, but the editor solely. The association thereupon passed a resolution that their funds be used in defending the action against the editor and defraying costs and expenses incurred therein. The plaintiff then obtained an order from North, J., restraining the association from expending their funds in this way; but the Court of Appeal, reversing the decision of North, J., held that as the editor had acted within the scope of her authority, and on the instructions of the body having the control of the newspaper, the association had a common interest with her in defending the action, and were justified in assisting her with their money in her defence.

but not for
mere non-
feasance.

But for mere nonfeasance or omission of duty, a servant is not liable to answer in a civil action at the suit of third persons, but only to his own master(s), who, in accordance with the maxim already alluded to, "*Respondet superior*," is liable to answer for his

(q) *Monks v. Dillon*, 12 L. R., 1r 321, following *Wilson v. Pitts*, 6 Moore, C. P. 47, where a contractor's managing clerk, who merely superintended for his master the execution of the works, was held liable for the obstruction of the plaintiff's rights caused thereby. See also *Thompson v. Gibson*, 7 M. & W. 456.

(r) *Breay v. Royal British Nurses Association*, (1897) 2 Ch. 272

(s) *Gidley v. Lord Palmerston*, 3 Brod. & B. 275, 285.

servant's neglect (*t*). This distinction between misfeasance and nonfeasance was thus stated by Lord Holt, in his celebrated judgment in *Lane v. Cotton* (*u*) :—

*Lane v.
Cotton.*

“It was objected at the bar that they have this remedy against Breese (the servant). I agree if they could prove that he took out the bills they might sue him for it : so they might anybody else on whom they could fix that fact : but for a neglect in him they can have no remedy against him, for they must consider him only as a servant, and then his neglect is only chargeable on his master or principal ; for a servant or deputy *quatenus* such cannot be charged for neglect, but the principal only shall be charged for it : but for a misfeasance an action will lie against a servant or deputy, but not *quatenus* a deputy or servant, but as a wrongdoer.”

Upon the principle that a servant is liable for a *misfeasance*, the defendant was held liable in *Perkins v. Smith* (*x*), which may be regarded as a leading case upon this subject. In that case the facts were shortly these : The plaintiff was assignee of a bankrupt, and the defendant servant and riding clerk to a creditor of the bankrupt ; the defendant went to the bankrupt's shop to try and get his master's money and found it shut up, but the bankrupt delivered to the defendant certain goods, for which the defendant gave a receipt in his master's name, and then sold the goods for his master's use ; upon which the bankrupt's assignee brought an action of trover against the servant. It was objected that the action was improperly brought against the servant, who

Conversion of
goods by
servant.
*Perkins v.
Smith.*

(*t*) So the servant of a carrier is not generally responsible for the loss of a parcel to the owner, who should look to the master, *Williams v. Cranston*, 2 Stark. 82 ; *Cavenagh v. Such*, 1 Price, 328, as the duty (the breach of which gives the right of action) is towards the master. See *Marshall v. York, Newcastle, and Berwick Railway Co.*, 11 C. B. 655 ; where it was held that a servant might maintain an action *against* carriers for loss of his luggage, although his master paid the fare. See also *Collett v. London and North Western Railway Co.*, 16 Q. B. 984 ; *Longneid v. Holloway*, 6 Exc. 761 ; *Dalyell v. Tyrer*, 28 L. J., Q. B. 52 ; *Foulkes v. Metropolitan District Railway Co.*, 5 C. P. D. 157. It has been held that a carrier's servant might sue a person who sent a dangerous article, nitric acid, to be carried, not properly labelled, which burst and injured the plaintiff. *Farrant v. Barnes*, 31 L. J., C. P. 137. In such a case, if the servant dies, *actio personalis moritur cum persona*. *Pulling v. Great Eastern Railway Co.*, 9 Q. B. D. 110.

(*u*) 12 Mod. 473, 488.

(*x*) 1 Wils. 328 ; *Symonds v. Atkinson*, 1 H. & N. 146 ; and see *Michael v. Alestree*, 2 Lev. 172, *ante*, p. 285, where the action (for negligent driving) was brought against both master and servant.

*Perkins v.
Smith.*

acted wholly in this matter for his master, and that the conversion, which is the gist of the action of trover, was found to be to the use of the master. But after two arguments at the bar, the Court gave judgment for the plaintiff, Lee, C. J., saying:—

“The point is whether the defendant is not a tort-feasor, for, if he is so, no authority that he can derive from his master can excuse him from being liable in this action (2). The act of selling the goods is the conversion, and whether to the use of himself or another, it makes no difference. I am very well satisfied that this servant has done wrong, and that no authority that could be derived from his master, before or after the fact, can excuse him.”

*Stephens v.
Elwall.*

The rule thus laid down was again acted on in *Stephens v. Elwall* (a), which was also an action of trover by the assignees of a bankrupt for goods which the bankrupt had sold after his bankruptcy to D., to be paid for by bills on H., for whom the goods were bought. H. was in America, and the defendant was his clerk; the goods were delivered to the defendant, who sent them to H. in America. At the trial it was contended, on the authority of *Perkins v. Smith*, that the defendant was liable, although he merely acted as clerk to H.; the judge, however, thought otherwise, and so directed the jury, who found a verdict for the defendant. But in the following term a new trial was granted, Lord Ellenborough, C. J., saying:—

“The only question is, whether this is a conversion in the clerk, which undoubtedly was so in the master. The clerk acted under an unavoidable ignorance and for his master's benefit when he sent the goods to his master; but nevertheless his acts may amount to a conversion, for a person is guilty of a conversion who intermeddles with any property and disposes of it, and it is no answer that he acted under authority from another who had himself no authority to dispose of it. And the Court is governed by the principle of law and not by the hardship of any particular case. For what can be more hard than the common case in trespass where a servant has done some act in assertion of his master's right, that he shall be liable, not only jointly with his master, but, if his master

(2) If a servant acts as a mere conduit pipe for communicating an authority from his master to another person, *semble* he would not render himself liable: *Bennett v. Bages*, 29 L. J., Exc. 224.

(a) 4 M. & S. 259; see *Greenway v. Fisher*, 4 C. & P. 190. In *Dixon v. Birch*, L. R., 8 Exc. 135, it was held that the salaried manager of an hotel belonging to a company was not an innkeeper liable for loss of goods, although the licence (under 9 Geo. 4, c. 61) was granted to him personally.

cannot satisfy it, for every penny of the whole damage : and his person also shall be liable for it ; and what is still more, that he shall *not recover contribution*" (b). *Stephens v. Elwall.*

In *Hollins v. Fowler* (c), Blackburn, J., in giving his opinion to the House of Lords, said that no case harder than that of the defendant in *Stephens v. Elwall* could well be imagined, unless perhaps that of a sheriff who seized goods which, in consequence of a secret act of bankruptcy, had become the goods of the assignees. The House of Lords in this case approved of the decision in *Stephens v. Elwall*, and held that any person who, however innocently, obtains possession of the goods of a person who has been fraudulently deprived of them, and disposes of them, whether for his own benefit or that of any other person, is guilty of a conversion. *Hollins v. Fowler.*

Similar principles were again enforced in *Cranch v. White* (d). That was an action of trover for a bill of exchange which had been entrusted by the plaintiff to one Roberts to get discounted. Roberts owed the defendant's mother, who was a coal merchant, and whose clerk the defendant was, a large sum for coals, and instead of getting the bill discounted, Roberts indorsed it and placed it in the hands of the defendant, who carried it to the credit of Roberts's account with his, the defendant's, mother. The defendant, when apprised of Roberts's fraud, refused to deliver up the bill ; but it was held that by so doing he rendered himself liable to the action of trover *Cranch v. White.*

(b) As to the recovery of contribution, see *Merryweather v. Nixan*, 8 T. R. 186, 1 Smith's L. C., where the subsequent cases will be found collected. As to whether the Court would interfere to protect the servant, see *Gregory v. Stowman*, 1 E. & B. 360.

(c) L. R., 7 H. L. 757. These cases were followed in *Winter v. Banks*, 84 L. T. Rep. 504. In that case a gig which had been stolen was found in the possession of B. The police took possession of the gig while B. was tried for larceny. B. was acquitted. Thereupon the defendant in the action, who was a police officer, acting on the instructions of his superior officer, delivered back the gig to B. In an action of trover by the true owner of the gig, the police officer was held liable. In *Turner v. Hockey*, 56 L. J., Q. B. 301, an auctioneer, who in the ordinary course of business had sold by public auction for A. goods ostensibly belonging to A., but really belonging to B., and had, without notice, paid over to A. the proceeds of the sale, was held to be not guilty of a conversion. But that case has been adversely commented on by Romer, J., in *Barker v. Furlong*, (1891) 2 Ch. 172.

(d) 1 Bing. N. C. 414 ; and see *Davies v. Vernon*, 6 Q. B. 443.

which was brought against him, although it was contended on his behalf that the action should have been brought against his mother; Tindal, C. J., saying that any justification of the defendant's conduct, as the agent of his mother, fell to the ground on the authority of *Perkins v. Smith* and *Stephens v. Elwall*.

*Powell v.
Hoyland.*

And again, in *Powell v. Hoyland* (e); where the defendant, acting on behalf of Y. & Co., obtained from the plaintiff certain bills of exchange under circumstances which did not entitle Y. & Co. to them. These circumstances were unknown to the defendant at the time he obtained the bills from the plaintiff, but he was afterwards, and before he had delivered the bills to Y. & Co., informed of the facts, and told that his employers had no right to the bills. In spite of this information he refused to give the bills to the plaintiff, and delivered them to his employers; and it was held that by so doing he became liable to an action of trover; Lord Wensleydale observing, "There is no doubt that, though the defendant did not receive the bills for himself but as the agent of Y. & Co., he may be liable in an action of trover, if the facts show a conversion by him;" which they were held to do.

Servant not
liable without
proof of
actual conver-
sion by him.

Where, however, a servant merely refuses to deliver goods received from his master to any other person, without his master's orders, such refusal has been held not to amount to a conversion by the servant, and he has accordingly been held not liable to an action of trover (f).

*Mires v.
Solchay.*

Upon this distinction depends the old case of *Mires v. Solchay* (g). There the defendant, by command of his master, drove some sheep, which the plaintiff claimed to have purchased, on to his master's land, and then refused

(e) 6 Ex. 67.

(f) If he refuse to give up goods to the rightful owner, and rely on his master's title, he may be liable in trover; *aliter*, if he merely give a qualified refusal and refer to his master, *Lee v. Robinson*, 25 L. J., C. P. 249; S. C. *nom.* *Lee v. Bayes*, 18 C. B. 599, 607. See also *Hollins v. Fowler*, L. R., 7 H. L. 757, where the grounds on which trover is maintainable are discussed.

(g) 2 Mod. 242.

to deliver them to the plaintiff: he was held not liable in trover for so doing; "for it being in obedience to his master's command, though he had no title, yet he shall be excused."

So where (*h*) the defendant, who was servant to an insurance company, had in his custody in a warehouse, of which he kept the key, certain goods belonging to the plaintiff, saved from a fire at the plaintiff's house, and which had been carried to the warehouse by the servants of the company, and, upon the plaintiff demanding the goods, said he could not deliver them without an order from the company, he was held not liable to an action of trover, as the refusal to deliver the goods without an order from his master did not amount to a conversion of the goods.

*Alexander v.
Southey.*

"If," said Holroyd, J., "we were to hold this refusal to be a conversion, it would go this length, that if a person were to call at a gentleman's house and to ask his servant to deliver goods to him, and the servant were to refuse to do so unless a previous application was made to his master, it would amount to a conversion on the part of the servant. In this case the goods came into the defendant's possession lawfully, and the refusal is only till an order is obtained from the defendant's employers. In *Perkins v. Smith* the defendant received the goods wrongfully at first, and the conversion was by an actual sale of them. Now it is clear that the authority of the master would not amount to a defence of that which was altogether a tortious act of the servant. The case of *Mires v. Solehay* is an authority in point."

But a warehouseman (*i*) who refused to deliver goods out of his warehouse to the rightful owner, without the direction of the person from whom he (the warehouseman) received them, was held liable to an action of trover at the suit of the rightful owner, as such refusal was considered to be sufficient evidence of conversion. In

*Wilson v.
Anderton.*

(*h*) *Alexander v. Southey*, 5 B. & Ald. 247; and see *Grylls v. Davies*, 2 B. & Ad. 514. In *Day v. Bream*, 2 M. & Rob. 54, a porter who, in the course of his business, delivered parcels containing libellous publications, was held not liable to an action for libel, as he was ignorant of the contents of the parcel. And in *Emmens v. Pottle*, 16 Q. B. D. 354, it was held that under certain circumstances it is possible for a news vendor who has sold a newspaper containing a libel to prove that he has not published the libel.

(*i*) *Wilson v. Anderton*, 1 B. & Ad. 450.

that case, however, the defendant was a warehouseman, and it was considered that the defendant had by his conduct *identified* himself with the person from whom he received the goods; whereas in *Alexander v. Southey* the defendant was merely a servant, and referred the parties to his master (*j*).

*Ferrall v.
Robinson.*

Where a servant of the law refused to give up goods which had been attached by legal process, saying that they were in the custody of the law, his doing so was held not to amount to a conversion so as to render him liable to an action at the suit of the owner of the goods (*k*). There, however, the defendant remained *passive*; had he taken upon himself to decide, he might perhaps have rendered himself liable (*l*).

As to servant's
liability for
fraud in
transacting
his master's
business.

We have already seen in the preceding chapter that if a servant is guilty of a fraud in transacting his master's business, the master may be liable to an action at the suit of the party defrauded. And the servant also is liable and cannot shelter himself under his master's responsibility, although authorized by his master to commit the fraud.

*Cullen v.
Thompson.*

Upon this principle the House of Lords held that the manager and secretary of a joint stock company, who had furnished detailed statements and were cognizant of a fraudulent report issued and signed by directors only, were liable to third persons who on the faith of such report had become shareholders in the company (*m*).

The Lord Chancellor (Lord Westbury) there said:—

"All persons directly concerned in the commission of a fraud are to be treated as principals. No party can be permitted to excuse himself on the ground that he acted as the agent or as the servant of another; and the reason is plain, for the contract of agency or of service cannot impose any obligation on the agent or servant to commit or assist in the committing of a fraud."

(j) See *Catterall v. Kenyon*, 3 Q. B. 310.

(k) *Ferrall v. Robinson*, 2 C. M. & R. 195.

(l) *Catterall v. Kenyon*, 3 Q. B. 310.

(m) *Cullen v. Thompson*, 9 Jur., N. S. 85. It has indeed been laid down in 1 Roll. Abr. 95, that if the servant of a taverner sell bad wine knowingly, no action lies against him, for he only did it as a servant.

We have also, while treating of the liability of a master for the tortious acts of his servants, seen that an exception to his general liability in such cases is established in the case of servants of the Crown in a superior capacity, who are not in general responsible for the tortious acts of their subordinate officers. It by no means follows, however, that such subordinate officers are not themselves responsible for their own misdeeds. On the contrary, the exemption of their superior officers from liability to answer for their misfeasances, would seem to offer an *à fortiori* reason for holding *them* responsible for their own acts, otherwise wrongs committed by them might go altogether unredressed, since, upon public grounds, Government are not generally responsible for the misfeasances of their officers (*n*).

Public officers
in subordinate
capacity
personally
liable for mis-
feasance.

Accordingly, in the cases before referred to, of actions against the postmaster-general for the loss of letters, we find it admitted on all hands that the servant, through whose negligence the letters were lost, would have been liable to actions at the suit of the parties injured, and the only question made was, as to the liability of the master.

Deputy post-
master.

“As to an action on the case lying against the party really offending,” said Lord Mansfield (*o*). “there can be no doubt of it; for whoever does an act by which another person receives an injury is liable in an action for the injury sustained. If the man who receives a penny to carry the letters to the post-office loses any of them, he is answerable, so is the sorter in the business of his department, so is the postmaster for any fault of his own.”

(*n*) In *Feather v. Reg.*, 35 L. J., Q. B. 200, Cockburn, C. J., said that no authority is needed to establish that a servant of the Crown is responsible in law for a tortious act done by authority of the Crown. See also *Tobin v. Reg.*, 16 C. B., N. S. 310; and *Raleigh v. Goschen*, (1898) 1 Ch. 73. But where the captain of a man-of-war burnt the barracoons of a Spanish slave dealer, a foreigner, and this act was subsequently ratified by the *ministers of state*, it was held that the captain was not liable to an action at the suit of the Spaniard, who had his remedy, such as it was, against the Crown only, *Buron v. Denman*, 2 Exc. 167. In *Bradlaugh v. Gossett*, 12 Q. B. Div. 271, it was held that no action will lie against an officer of the House of Commons for acts done under an order of the House with the execution of which he is charged by a resolution of the House, although such resolution may forbid a member of the House to do that which by the law of the land he has a right to do.

(*o*) In *Whitfield v. Lord Le Despenser*, Cowp. 754, 765.

Upon this principle, in several cases, the deputy post-master has been held liable to an action for the non-delivery of letters which it was his duty to have delivered, as well as the penalty for detaining letters imposed by statute (*p*).

Ministerial
public offices
liable for
negligence,
&c.

Sheriff:

but not
under-
sheriff.

Returning
officer.

There is also a large class of cases, which may be conveniently noticed in this place, in which public officers in a merely ministerial capacity (*q*) have been held liable to answer in an action at the suit of the party injured, for negligence in the performance of the duties cast upon them. Thus, for instance, a sheriff, whose duty in many cases, such as the receipt, execution and return of writs, is that of a merely ministerial officer, is liable to be sued by the party aggrieved for any act of irregularity, misfeasance or nonfeasance in executing writs (*r*).

But an action by the party grieved does not generally lie against an *under-sheriff* for a breach of duty in the office of sheriff; the action must be brought against the high-sheriff as for an act done by him (*s*), and if it proceeds from the default of the under-sheriff or bailiff, that is a matter to be settled between them and the high-sheriff (*t*).

A returning officer at an election of members of Parliament was held by the House of Lords, in the great case of *Ashby v. White*, to be liable to an action for maliciously refusing to receive the vote of a person entitled to vote (*u*).

[*p*] *Stock v. Harris*, 5 Burr. 2709; *Burnes v. Foley*, *ib.* 2711; *Rowning v. Goodchild*, *ib.* 2716.

[*q*] But no action lies against persons acting in a judicial capacity, *Greenwell v. Burwell*, 1 Lord Raym. 451; see *Miller v. Seave*, 2 W. Bl. 1141; *Dossell v. Impoy*, 1 B. & C. 163.

[*r*] *Enc. Abr. Sheriff, M.*; *Watson's Sheriff*, 117.

[*s*] For the under-sheriff ought to act in the name of the high-sheriff, see *Wats. Sheriff*, 37; and *Stroud v. Watts*, 2 C. B. 929; *R. v. Schlesinger*, 10 Q. B. 670; *Gloucestershire Banking Co. v. Edwards*, 20 Q. B. D. 107.

[*t*] *Cameron v. Reynolds*, Cowp. 403.

[*u*] 2 Lord Raym. 938; 1 Smith's L. C.; and see *Cullen v. Morris*, 2 Stark 577; *Pryor v. Belcher*, 4 C. B. 866, which were similar actions, and from which it would seem that *malice* is a necessary ingredient in such action, as the returning officer is partly a judicial and partly a ministerial officer,

And the case of *Perring v. Harris* (*w*), which was an action against an overseer of the poor, for maliciously omitting to insert the plaintiff's name in the poor-rate, whereby she was prevented from obtaining a licence to sell beer, was one of a similar nature. Overseer.

So lottery commissioners have been held liable to an action for not adjudging a prize to the holder of a ticket entitled to receive it (*x*). Lottery commissioners.

And so a collector of customs, appointed by the commissioners under the statute 3 & 4 Will. 4, c. 51, was held liable (*y*) to an action at the suit of the party grieved, for nonfeasance in the exercise of his office, viz., for refusing to sign a bill of entry of certain goods without payment of an excessive duty. In giving judgment in that case Lord Denman, C. J., said:— Collector of customs.

“The defendant is a public ministerial officer, and being so, is responsible for neglect of his duty to any individual who sustains damage by such neglect. *Schinotti v. Bumsted* (*z*) is a strong authority to this effect: the facts in that case respecting the commissioners of the lottery tending much more to raise a doubt whether the defendants had not a judicial discretion entrusted to them: and in *Lacey v. Hooper* (*a*), which was an action against the commissioners of customs for not making a certain order for the payment of money to which the plaintiffs claimed to be entitled under an Act for the encouragement of the South Sea whale fishery, it was not questioned but that even they would be liable to the action if the neglect of duty were made out.” Commissioners of customs.

Where an Act of Parliament provided that no matter or thing done, or contract entered into, by the commissioners of sewers, or by any clerk, surveyor or other officer or person acting under their direction, should, if the matter or thing were done or the contract were entered into *bonâ fide* for the purpose of executing the act, subject them personally to any action or liability *Ward v. Lee.*

though it was formerly thought otherwise, see *per* Holroyd, J., in *Dostwell v. Impey*, 1 B. & C. 163. But see *Pickering v. James*, L. R., 8 C. P. 489.

(*w*) 2 M. & Rob. 5.

(*x*) *Schinotti v. Bumsted*, 6 T. R. 646.

(*y*) *Barry v. Arnaud*, 10 A. & E. 646. And see *Barrow v. Arnaud*, 8 Q. B. 595, where it was not even suggested that the defendant was not liable to be sued, if the duty claimed in that case was excessive.

(*z*) 6 T. R. 646.

(*a*) 6 T. R. 224.

whatever, and any expense incurred by them was to be borne and paid out of the funds under the control of the commissioners: it was held that the effect of this was to absolve from personal liability to an action persons who *bona fide* did some act under the direction of the commissioners which but for the clause would subject them to an action (*b*).

*Hodgkinson v.
Ferne.*

Where a vessel of the royal navy, towing two transports, anchored by order of the admiral, and the captain ordered the vessels in tow to hold on by their warps, and afterwards a breeze sprang up and one of the transports swinging to it came into collision with another transport in another column, and the captain stated in evidence that after the order to hold on by the warps it would have been proper for the master of the transport to let go his anchor if anything occurred which would have made it dangerous to his own or other ships if he did not do so: it was held in an action against the owner of the transport for damage done by the collision, that the judge was right in leaving it to the jury to say whether the master was not guilty of negligent seamanship in not dropping his anchor when the wind changed (*c*).

(*b*) *Ward v. Lee*, 26 L. J., Q. B. 112.

(*c*) *Hodgkinson v. Fernie*, 26 L. J., C. P. 217.

CHAPTER VII.

THE SERVANT'S CHARACTER.

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THE CHARACTER—DEFAMATION.

THE giving a character of a servant is one of the most ordinary communications which a member of society is called on to make, but it is a duty of great importance to the interests of the public: and in respect of that duty a party offends grievously against the interests of the community in giving a good character where it is not deserved, or against justice and humanity in either injuriously refusing to give a character, or in designedly misrepresenting one to the detriment of the individual (*a*).

It is clear, however, that in the absence of any specific agreement to that effect, there is no *legal* obligation (*b*) binding a person who has retained another as a servant to give that person any character at all on dismissal, and that no action will lie against him for refusing to do so. Where, therefore (*c*), an action was brought by a servant

Master not bound to give any character.

(*a*) Starkie on Slander, vol. i., 293.

(*b*) In the case of a seaman, the master of the ship from which he is discharged is under a statutory duty of giving him a certificate of discharge, and in some cases of making a report of his character, a copy of which may be endorsed on the certificate; Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 128, 129; and see *Vallance v. Falle*, 13 Q. B. D. 109, as to the seaman's right of action against the master for breach of this duty.

(*c*) *Carrol v. Bird*, 3 Esp. 201. In *Pullman v. Hill & Co.*, (1891) 1 Q. B. 524, Lord Esher, M. R., said, "It is not the legal duty of the master to give a character to the servant, but it is his moral duty to do so."

*Carrol v.
Bird.*

against her master for wholly refusing to give her any character whatever, on dismissal, by reason of which refusal one S. refused to hire her, Lord Kenyon said, the action could not be supported; that in the case of domestic and menial servants there was no law to compel the master to give the servant a character; it might be a duty which his feelings might prompt him to perform, but there was no law to enforce the doing of it.

But if he
does the
communication
is generally
privileged;

Where a master does give a discharged servant a character, he may perhaps in so doing make a statement which the servant regards as defamatory (*d*) and uses as the foundation of an action of libel or slander.

unless malice
is proved.

It may be stated generally that such a statement, if made without "express malice," is a privileged communication, so that the master will not be liable to the servant in respect of it. That is to say, if he should be sued by the servant, he will generally be enabled to rely upon the defence of privilege (*e*), *i.e.*, that the occasion on which the statement complained of was made was a privileged one. If this defence is raised and proved the servant must then, in order to succeed in the action, show that the master has been guilty of express malice (*f*).

It will be convenient to treat of these matters in order, and first of all, therefore, to consider, with especial reference to servants, the nature of the circumstances which will give rise to an action of defamation.

Libel.

Any defamatory statement concerning an individual, if published to another by means of writing, or some other more or less permanent method, is *prima facie* a libel, and is actionable without more, as being a wrong in regard to which the law presumes that some damage has

d) If the expressions used are capable of a harmless and also of a defamatory meaning, an innuendo, or statement of the defamatory meaning relied on, should be set out in the statement of claim. It is for the Court to determine whether the words used are capable of the meaning alleged in the innuendo; it is for the jury to determine whether that meaning was properly attached to them. *Australian Newspaper Co. v. Bennett*, (1894) A. C. 284.

e) *Post*, p. 390.

f) *Post*, p. 408.

been caused to the plaintiff in the ordinary course of things.

If such a statement is published by word of mouth, it will only be actionable, as a slander, on proof of special damage (*g*); except in four cases, in which it is not necessary for the plaintiff to prove special damage, damage of some kind being presumed by the law as in the case of libel. These cases are, (1) where the words spoken impute to the plaintiff a contagious disease; (2) where they impute an indictable offence; (3) where they were spoken of the plaintiff in the way of his office, profession, trade or vocation, or disparage him in an office of public trust; and (4) words imputing unchastity or adultery to a woman or girl (*h*).

Of these four cases, the third is the only one which will here be discussed as having especial reference to the subject-matter of this book.

From this it will be seen that an action for slander may be maintained by a servant without proof of special damage, where the imputation affects him in his situation of servant, that is, where it is made with reference to his character or conduct as such, and imputes to him the want of some qualification for or misconduct in his situation.

Thus, in *Seaman v. Bigg* (*i*), in the time of Charles 1, it was held that the words, "Thou art a cozening knave, and hast cozened thymaster of a bushel of barley," spoken of a bailiff and servant in husbandry, were actionable:

(*g*) By this it is meant that some actual temporal loss must be alleged and proved with such certainty and precision as the nature and circumstances of the case allow; *Ratcliffe v. Evans*, (1892) 2 Q. B. 524. The connection of the damage complained of with the words spoken by the defendant has been the subject of some doubt; see *Vicars v. Wilcocks*, 8 East, 1, for the view formerly taken, and the notes to that case in 2 Sm. L. C. It is settled now that the injury alleged must be the natural and probable consequence of the defendant's acts; *Lynch v. Knight*, 9 H. L. C. 577; *Bowen v. Hall*, 6 Q. B. D. 333. As to how far the utterer of a slander is liable for its repetition, see *Riding v. Smith*, 1 Ex. D. 91; *Spright v. Gosnay*, 60 L. J., Q. B. 231; *Ratcliffe v. Evans*, (1892) 2 Q. B. 524.

(*h*) Slander of Women Act, 1891 (54 & 55 Vict. c. 51).

(*i*) Cro. Car. 480; and see *Reignald's case*, Cro. Car. 563, where similar words were held actionable when spoken of a deputy clerk to a register, and *Wright v. Moorhouse*, Cro. Eliz. 358.

Slander.

Imputation affecting servant in his character of servant.

Seaman v. Bigg.

*Seaman v.
Rigg.*

for, said the Court, though "true it is generally an action will not lie for calling one 'cozening knave,' yet where the words are spoken of one who is a servant and accomp- tant, and whose credit and maintenance depends upon his faithful dealing, and he by such disgraceful words is deprived of his livelihood and means of maintenance, there is good reason it should bear an action, that he might have recompense for loss of his credit and means."

Master
mariner.

Upon this ground it has been held that to impute habitual drunkenness to a master mariner in command of a vessel at sea (*k*); or to say of a gamekeeper in a hunting country that he killed foxes (*l*); were actionable without special damage.

Gamekeeper.

Servant girl.

And to say of a servant girl "You are not aware, Mrs. C., what kind of a girl you have in your service, for I can assure you she is often out with our married man" (*m*); or to say of her that while she was in Mrs. B.'s employment as domestic servant she was debauched and had a miscarriage, and in consequence was dismissed by Mrs. B. for such misconduct (*n*), is actionable without proof of special damage.

Must be con-
nected with
character.

But unless the imputation be connected with the ser- vant's occupation, or show the want of some general requisite, no action can be maintained in respect of it. "Every authority which I have been able to find," said Bayley, B., in *Lumby v. Allday* (*o*), "either shows the want of some general requisite, as honesty, capacity, fidelity, &c., or connects the imputation with the plaintiff's office, trade or business." In that case, therefore, where the defendant said of the plaintiff, who was clerk to the Birmingham and Staffordshire Gas Light Company, "You are a fellow, a disgrace to the town, unfit to hold your

*Lumby v.
Allday.*

k) *Irwin v. Brandwood*, 2 H. & C. 960. See also *Hamon v. Falle*, 4 App. Cns. 247.

l) *Foulger v. Newcomb*, L. R., 2 Ex. 327.

m) *Rumsey v. Webb*, 11 L. J., C. P. 129.

n) *Connors v. Justice*, 13 Ir., C. L. R. 451. See now also the Slander of Women Act, 1891 (54 & 55 Vict. c. 51).

o) 1 Cr. & J. 301, 395; cited with approval by Lord Herschell in *Alexander v. Jenkins*, (1892) 1 Q. B. 797.

situation for your conduct with whores. I will have you in the *Argus*. You have bought up all the copies of the *Argus*, knowing you have been exposed. You may drown yourself, for you are not fit to live, and are a disgrace to the situation you hold," Bayley, B., intimated a strong opinion that the charge proved was not actionable; because the imputation it contained did not imply the want of any of those qualities which a clerk ought to possess, and because the imputation had no reference to his conduct as clerk (*p*).

Lumby v.
Allday.

The next thing to be borne in mind is that it is not the mere writing of a libel or the mere uttering of slanderous words that is actionable. It is the publication that is actionable, that is to say, the communication of the defamatory matter to some person other than the person who is defamed. For this purpose it has been held (*q*) that husband and wife are one person, so that the communication of a libel on a domestic servant made by a husband to his wife is not evidence of its publication. If a writing is sent straight to the person of whom it is written, there is no publication of it. And if the writer of a letter locks it up in his desk, and a thief breaks open the desk and takes the letter away and makes its contents known, there would probably be no publication by the writer. But if the writer gives the letter to his clerk to copy for him, or if he direct it to the person of whom it is written and send it by post in such a way that it may probably be opened and read by that person's clerk, and it is so opened and read, this would be a publication by the writer (*r*).

Publication
of libel or
slander.

(*p*) See *Ayre v. Cruven*, 2 A. & E. 2; *Southee v. Denny*, 1 Exc. 196; *Hopwood v. Thorn*, 8 C. B. 293; *Miller v. David*, L. R., 9 C. P. 118, where it was held not to be actionable to say of a stonemason that he was ringleader of the nine-hours' system, &c. In *James v. Brook*, 9 Q. B. 7, the words complained of were that the plaintiff had "been guilty of conduct unfit for publication." This was held not actionable unless shown to have been spoken with reference to the plaintiff's office.

(*q*) *Wemhah v. Morgan*, 20 Q. B. D. 635.

(*r*) *Pullman v. Hill & Co.*, (1891) 1 Q. B. 524. But such a publication to a clerk may be privileged; as where a solicitor, writing on behalf of a client on a privileged occasion, gives the letter to his clerk to copy in the ordinary course of a solicitor's business: *Boxsius v. Goblet Frères*, (1894) 1 Q. B. 542.

Publication by
postcard or
telegram.

Where by a *bonâ fide* mistake a letter containing defamatory words concerning a servant was addressed to the master, instead of the servant at the master's house, it was held (*s*) that there was no publication; and a libel may be published by writing it on the back of a postcard, addressed to the person defamed, or by means of a telegram to him (*t*).

What are
privileged
communica-
tions.

It has been already stated as a general rule that anything said or written by a master in giving a character to a discharged servant, if said or written without express malice, is a privileged communication, so that the master will not be liable to the servant in respect of it.

Lindley, L. J., in a considered judgment (*u*) has thus explained the meaning of the term privileged communication:—

"A privileged communication is one made on a privileged occasion, and fairly warranted by it, and not proved to have been made maliciously. A privileged occasion is one which is held in point of law to rebut the legal implication of malice which would otherwise be made from the utterance of untrue defamatory language. This is the effect in a few words of the leading cases on the subject,—namely, *Too good v. Spyring* (*r*); *Wright v. Woodgate* (*w*); *Corhead v. Richards* (*x*); *Whiteley v. Adams* (*y*); and *Clark v. Molyneux* (*z*).

Privileged
occasion.

The question therefore arises what is the meaning of a "privileged occasion"? (*u*).

(*s*) *For v. Broderick*, 14 Ir., C. L. R. 453.

(*t*) *Williamson v. Freer*, L. R., 9 C. P. 393; *Sadgrove v. Hole*, (1901) 2 K. B. 1.

(*u*) *Stuart v. Bril*, (1891) 2 Q. B. 341.

(*r*) 1 C., M. & R. 181.

(*w*) 2 C., M. & R. 573.

(*x*) 2 C. B. 569.

(*y*) 15 C. B., N. S. 392, 418.

(*z*) 3 Q. B. D. 237.

(*a*) The privilege which may be a defence in an action of libel or slander may either be absolute or qualified. In the one case, *i.e.*, if the statement complained of was published upon an occasion which is absolutely privileged, no action will lie, even though the person publishing the statement was actuated by express malice. This absolute privilege which attaches to statements made in Parliament, or in the ordinary course of judicial proceedings or in matters of State, or in certain other cases, is rather outside the scope of this book. The qualified privilege which concerns persons standing merely in the relation of master and servant, and which may be lost or destroyed by express malice, is the one which is hereafter mainly referred to.

It may be first observed that in the trial of every action in which the defendant pleads privilege, the question whether the occasion on which the defamatory statement was published is privileged, if the facts are not in dispute, is a question of law only, for the judge, not for the jury. If there are questions of fact in dispute upon which this question depends, they must be left to the jury; but when the jury have found the facts it is for the judge to say whether they constitute a privileged occasion (*b*).

Question of privilege is for judge.

The reasons for holding any occasion privileged is common convenience and welfare of society, and it is obvious that no definite line can be so drawn as to mark off with precision those occasions which are privileged and separate them from those which are not (*c*).

Grounds of privilege.

But certain limits have been laid down which show that a communication will not be privileged unless it is "made by a person in the discharge of some public or private duty, whether legal or moral, or in the conduct of his own affairs, in matters where his interest is concerned" (*d*).

It is not necessary here to follow out the application of the rule thus laid down to all the cases to which it has been applied. It will be sufficient to lay before the reader those cases which bear more immediately upon the subject-matter of this book, to which it has been held applicable. And in doing so, it will be convenient to consider—

I. Communications made in discharge of some duty; and

II. Communications made by a person in the conduct of his own affairs, in matters where his interest is concerned.

(*b*) *Hebditch v. M'Ilwaine*, (1894) 2 Q. B. 54.

(*c*) *Per* Lindley, L. J., in *Stuart v. Bell*, (1891) 2 Q. B. 341.

(*d*) *Per* Parke, B., in *Toogood v. Spyring*, 1 C., M. & R. 181. The passage from which these words are taken, says Lindley, L. J., in *Stuart v. Bell*, has been frequently quoted and always with approval. In *Whiteley v. Adams*, 33 L. J., C. P. 89, Erle, C. J., said that judges have all felt great difficulty in defining what kind of social or moral duty, or what amount of interest, will afford a justification; but all are clear that it is a question for the judge to decide.

Communica-
tions made in
discharge of
a duty.

1. Communications made in discharge of some duty.

The duty here referred to need not be a legal duty. It is enough if there be some sort of duty of imperfect obligation, whether social or moral. But some such duty must in fact exist, it will not be enough in order to make an occasion privileged that the person whose statements are complained of believed a duty to exist, or acted under a sense of duty. This, though important on the question of malice, is not relevant to the question whether the occasion was or was not privileged (*e*).

Giving a
character to
a discharged
servant.

It is clearly settled that a master is under a duty of this sort, whether it be called a moral duty or a duty to society, to give a character to a discharged servant. The privilege which he has in this matter is not allowed only for the benefit of the giver. It is of importance to the public that characters should be readily given. The servant who applies for the character, and the person who is to take him are equally benefited. Indeed, there is no class to whom it is of so much importance that characters should be freely given as honest servants. It is for that object that the communications are protected (*f*).

In all cases of qualified privilege precisely the same considerations apply, and there is no reason why any greater protection should be given to a communication made in answer to an inquiry with reference to a servant's character than to any other communication made from a sense of duty, legal, moral or social. In such a case *bona fides* is always presumed (*g*).

Character
volunteered.

Usually communications by a person with respect to the character of a discharged servant are made in

e) *Stuart v. Bell*, (1891) 2 Q. B. 341; *Hebditch v. M'Heavine*, (1894) 2 Q. B. 54. The latter case also shows that the person to whom the communication is made must also have an interest or duty in the subject-matter of the communication.

f) *Per* Wightman, J., in *Gardner v. Stode*, 13 Q. B. 801. But they are not privileged from production under an order for discovery: *Webb v. East*, 5 Ex. D. 108.

g) *Jennure v. Delmege*, (1891) A. C. 73; and see Lord Denman, C. J., in *Fountain v. Boodle*, 3 Q. B. 5.

answer to some one's inquiries about it, but it is not necessary, in order to make the occasion privileged, that inquiries should first be made. A master may (when he thinks that another is about to take into his service one whom he knows ought not to be taken) set himself in motion and do some act to induce that other to seek information from and put questions to him (*h*).

And if, after giving a character, new facts should come to the late master's knowledge which lead him to alter the opinion which he had previously given as to the servant's character, the occasion of his giving his new opinion would also be privileged.

In *Gardner v. Slade* (*i*) the facts were as follows:—The plaintiff had been cook in the defendant's family, and left. M. applied for her character at a time when Mrs. Slade was ill. Mr. S. answered the application, and gave the plaintiff a good character, whereupon M. hired her. Mrs. S. recovered, and having occasion to write to M. about another cook, asked about her dealings with respect to meat, &c., in the kitchen, and ended, "I mention this particularly, having discovered that I have been much imposed upon in this way a short time ago." M. called on Mrs. S., and she in conversation spoke the words complained of, which were to the effect that she suspected that the conduct of the plaintiff, when in her service, was not honest. After action brought she wrote

Gardner v. Slade.

Answers to inquiries induced by defendant as to facts discovered since character given.

(*h*) *Per* Bayley, J., in *Pattison v. Jones*, 8 B. & C. 578; *Waller v. Loch*, 7 Q. B. D. 619.

(*i*) *Gardner v. Slade*, 13 Q. B. 796. See *Owens v. Roberts*, 6 Ir. C. L. Rep., 386, where Monahan, C. J., said, "We are of opinion that if a person, having an interest in obtaining information as to the affairs of another person, makes a *bonâ fide* application to a third person for that purpose, and the latter in reply to such inquiry gives the information required, such a communication is privileged; for the fact of such an inquiry having been made, not officially but *bonâ fide* and by a person interested, imposed upon the person of whom the inquiry is made an obligation either not to speak at all upon the subject, or if he does so, to speak the truth. And we are of opinion upon all the authorities, that in the case of a person making an inquiry of another who is the acquaintance of the third person as to whom the inquiry is made, and from his position likely to be acquainted with the affairs of the latter, and where the party making the inquiry is or is about to become a creditor of such third person, that such a communication is privileged." See also *Child v. Affleck*, 9 B. & C. 403.

*Gardner v.
Slade.*

to M. saying, "You will remember that I imputed no dishonesty; for of that I have no knowledge." The jury found that the defendant by her letter intended to induce inquiries on B.'s part as to the plaintiff, and found a verdict for the plaintiff. But the Court afterwards ordered a nonsuit to be entered, on the ground that the communication was privileged, and there was no evidence of malice. And Lord Denman said,—

"I think the privilege which protects a master in giving a character lasts as long as anything is discovered before unknown to the master; as for instance, if I give a good character to a servant, and next day discover that the servant is dishonest; surely, in such a case it becomes my duty to communicate my discovery to the person to whom I have given the character."

And Coleridge, J., added, "Nobody can doubt that."

*Harris v.
Thompson.*

Facts learnt
at one board
of directors
communicated
to another by
member of
both boards.

The plaintiff (*k*) was secretary of the Brewers' Insurance Company, and being charged with misconduct was called upon to attend a board of directors to explain, but declined to do so; whereupon the directors, after hearing the nature of the charges, passed a resolution declaring him to have been guilty of gross misconduct and dismissing him. The defendant, who was a director of that company and also of another company called the London Necropolis Company, communicated the facts of the plaintiff's dismissal from the service of the former company "for gross misconduct," at a board meeting of the latter company, and proposed a resolution to dismiss him from his employment as their auditor, and in answer to an inquiry from the chairman, said the misconduct consisted in "obtaining money from the solicitors of the company under false pretences and paying a debt of his own with it;" and upon the plaintiff's appearing on a subsequent day with his attorney before the board to meet the charges against him, the defendant refused to go into them. It was held that such refusal was no evidence of malice; as being consistent with *bona fides*, *bona fides* must be presumed until the contrary was proved.

k *Harris v. Thompson*, 13 C. B. 333.

A letter addressed to a person on whose recommendation the writer had taken the plaintiff into his service, to the effect that his conduct had not justified the character given of him, that he had left a balance unaccounted for, and that he ought not to be recommended for morality or honesty, has been held to be a privileged communication (l).

In *Stuart v. Bell* (m) the plaintiff was a valet, and while he and his master were staying at the house of the defendant, the Mayor of Newcastle, the chief constable of Newcastle showed the defendant a letter he had received from the Edinburgh police stating that the plaintiff was suspected of having committed a theft at a hotel in Edinburgh, and suggesting a cautious inquiry. The defendant did not make any inquiry, but told the plaintiff's master privately that there had been a theft in an Edinburgh hotel and that suspicion had fallen upon the plaintiff. Some days after, the plaintiff's master dismissed him upon the ground that he had been suspected of dishonesty. The majority of the Court of Appeal held that the occasion of the communication was privileged, and that, in the absence of evidence of malice, the defendant was not liable.

Stuart v. Bell.

And if a friend of the servant gets the servant's master to write him a letter repeating a bad character that had been given of the servant, this will be privileged. Thus, in *Weatherston v. Hawkins* (n), the plaintiff brought an action against his former master for publishing the following letter to C., the plaintiff's brother-in-law, respecting the plaintiff's character as a

Weatherston v. Hawkins.

Letter written to friend of servant, repeating bad character given to person about to hire.

(l) *Dixon v. Parsons*, 1 F. & F. 24. A similar question arose in *Fryer v. Kinnersley*, 15 C. B., N. S. 422, but the Court held that whatever might have been their opinion as to the privilege on the ground that the person to whom the letter was addressed had recommended the plaintiff to the defendant, and was in the habit of recommending gardeners for masters and masters for gardeners, yet the letter was "so much in excess of the occasion" as to be excluded from privilege. Upon this case being cited in *Cowles v. Potts*, 34 L. J., Q. B., 248, Blackburn, J., said, "I do not quite understand the *ratio decidendi*."

(m) (1891) 2 Q. B. 341.

(n) 1 T. R. 110.

Weatherston v. Hawkins. servant. "Two days I gave him money to go into the city and buy books. When he came home I desired him to reckon up his account; he did so. But being one day more curious than I sometimes was, I looked over his account, article by article; and in one, a book I well knew the price of, I found he had charged me one shilling more than it cost, and that shilling he kept in his pocket. The next day the very same affair. And both these days my neighbour Metcalf was in my shop, and knows it well, and said he would not keep such a man a day, or something to that purpose. Two magazines he charged 2s. for binding, the people received no more than 1s. 8d., and say he paid no more. This I can prove." It appeared that the plaintiff had been in the service of the defendant, and was by him turned away. Rogers, to whom the plaintiff was recommended as a servant, applied to the defendant for a character, which not being good, Rogers declined to take him. Upon this C. called repeatedly on the defendant, upon which the above letter was written, in order to prevent an action for the words spoken to Rogers by the defendant. But the present action was brought. It was, however, held by Lord Mansfield, C. J., and other judges, that it would not lie, as, instead of the plaintiff's showing the libel complained of to be false and malicious, it appeared to be incident to the application by Rogers to the master of the servant. And the letter was written to the brother-in-law of the plaintiff for the express purpose of preventing an action being brought (o).

Taylor v. Hawkins.

And so in *Taylor v. Hawkins* (p), it appeared that the plaintiff was a shopman of the defendant, and that the

(o) In *King v. Waring*, 5 Esp. 13, Lord Alvanley refused to allow a letter to be given in evidence, which had been procured by the plaintiff from the defendant by means of another letter, not written with a fair view of inquiring a character, but to procure an answer upon which to ground an action for a libel; and see 3 B. & P. 592.

(p) 16 Q. B. 398; and see *Harris v. Thompson*, 13 C. B. 333, cited *ante*, p. 394.

defendant, having a suspicion that he had embezzled money in the course of his employment, sent for the plaintiff, and, in the presence of a friend, Mr. T. uttered the words complained of in the first count, which were, "You pocketed the 5*s.* and altered the cheque; and you intended to alter the book, but being busy at the time, it escaped your memory," and immediately afterwards discharged him. After his discharge, the plaintiff being about to enter the service of B., the defendant was referred to for a character, but, in consequence of what the defendant then stated to him, B. declined to take the plaintiff into his employment. Upon this the plaintiff's brother called upon the defendant to inquire why he had given the plaintiff such a character as kept him from obtaining a situation; upon which the defendant said, "What would you do yourself if any of your shopmen or servants robbed you?" to which the plaintiff's brother replied, "I hope my brother has not been robbing you." The defendant then said, "He has robbed me; I believe that he has robbed me for years past; I can prove it from the circumstances under which he has been discharged by me." This last answer was what was complained of by the second count of the declaration. It was held that the occasion on which these communications were made was such as to render them privileged, and that the presence of a third party when they were made did not alone render them not so.

Communications made by a tenant to his landlord respecting the character of a servant about to be hired by the latter have also been held to be privileged (*q*). Thus, where (*r*) the father of the plaintiff had been for some years gamekeeper to the Marquis of Anglesey, and

Taylor v. Hawkins.
Charge of dishonesty made to person about to hire :

and repeated to friend of servant.

Letter written by tenant to his landlord respecting person who wished to be landlord's gamekeeper.

(*q*) As to how far a communication by a landlord to his tenant reflecting on the character of the tenant's servants is privileged, see *Knight v. Gibbs*, 1 A. & E. 43.

(*r*) *Cockayne v. Hodgkinson*, 5 C. & P. 543. The question of privilege appears not to have been raised in *Baylis v. Lawrence*, 11 A. & E. 920, in which case the libel complained of was contained in a letter written by defendant to plaintiff's landlord, complaining of his conduct about game.

*Cockayne v.
Hodgkinson.*

the plaintiff wished to become his lordship's gamekeeper and overlooker of fences for a farm of which the defendant, an old man, was tenant; and the defendant sent a letter to the Marquis, informing him, amongst other things, that the plaintiff encouraged poachers, and sold game, Mr. Justice Parke left it to the jury to say whether it was the duty of the defendant to make communications to the Marquis in respect of any neglect of duty in his gamekeepers; and said that—

"If he was desired to do so by the noble Marquis, or his agents, any communication he made would be privileged, if he wrote it *bonâ fide*, and considering that he was doing his duty to the Marquis as his landlord. If it was the duty of the defendant to make the communication, the case falls within the principle of many other cases. To write of another that he is a thief is a libel; but if one gentleman asks another gentleman respecting a servant's character, and he writes that the servant was a thief, he is protected if he acts *bonâ fide*."

His lordship also left the case to the jury on the question of malice, and they found for the defendant.

*Coxhead v.
Richards.*

In *Corheul v. Richards* (s), the facts were shortly these:—The plaintiff was a mariner, and had the command of a ship belonging to W., of which ship Cass, an intimate friend of the defendant, was mate. Cass wrote to the defendant reflecting in strong terms upon the plaintiff's conduct in a particular voyage, but requesting the defendant *not* to show the letter to W. On receipt of the letter, however, the defendant showed it to a naval friend, one of the elder brethren of the Trinity House, and also to Soames, an extensive shipowner, and in accordance with their advice, communicated it to W., who immediately superseded the plaintiff in his command, and ceased to employ him. The plaintiff upon this brought an action for libel against the defendant: and the defendant pleaded a justification, but failed to sustain it. And it did not appear that W. had instituted any inquiry into the charges contained in Cass's letter. On the part of the defendant it was contended that the action would

(s) 2 C. B. 569; see also *Blackham v. Pugh*, 2 C. B. 611; *Bennet v. Deacon*, 2 C. B. 628; *Jarvis v. Smead*, L. R., 5 Q. B. 608.

not lie, on the ground that the communication of the letter to W. was privileged. And Tindal, C. J., told the jury that the occasion and circumstances under which that communication took place, furnished a legal excuse for making it; that the plaintiff, to entitle himself to a verdict, must show malice in fact, and the jury must find for the defendant if they thought the communication strictly honest on his part, and made solely in the execution of what he *believed to be* a duty; but for the plaintiff, if they thought the communication was made from any indirect motive whatever, or from malice against the plaintiff. The jury found for the defendant. And in the following term a rule, *nisi* was obtained by the plaintiff for a new trial on the ground of misdirection. The rule was twice argued in consequence of a difference of opinion amongst the judges; and, ultimately, the four judges before whom the case was argued differed; Tindal, C. J., and Erle, J. (t), holding that the communication was privileged, as the defendant *bonâ fide* believed, and had reason to believe, the statement to be true, and that it was his duty to communicate it to the plaintiff's master; and Coltman and Cresswell, JJ., holding that it was *not* privileged, as there was no duty which obliged the defendant to make the communication without ascertaining its truth.

*Coxhead v.
Richards.*

Where the directors of a society (u), in their annual report, published a "caution to the public" against trusting a person who had formerly been employed to obtain and collect subscriptions for them, but had since been dismissed, such publication was held to be justifiable only so far as it was made in good faith, and required to protect the society and the public against the false

*Gussett v.
Gilbert.*
Directors'
report.

(t) And it is said that the opinion of Erskine, J., who retired from the bench, between the first and second argument of the case, was understood to be in favour of the defendant. See the note of the reporters, 2 C. B. 583; and see acc. *Jarvis v. Reeves*, 5 Ir. C. L. Rep. 79. In *Amann v. Damm*, 29 L. J., C. P. 314, Willes, J., expressed his concurrence in the opinion of Tindal, C. J., and Erle, J. So also did Lindley, L. J., in *Stuart v. Bell*, (1891) 2 Q. B. 341.

(u) *Gussett v. Gilbert*, 6 Gray (Amcr.) Rep. 94.

*Gassett v.
Gilbert.*

representations of that person. The question, whether they acted in good faith and did not exceed their privilege, is for the jury.

*Philadelphia,
&c. Railroad
Corporation v.
Quigley.*

In a case (*r*) in America, in which a railroad corporation was held liable, in its corporate capacity, for a libel published by its agents in the course of its business and of their employment, it was held to be within the course of its business and the employment of the president and directors for them to investigate the conduct of their officers and agents, and report the result to the stockholders. It was also held, that in the absence of malice or bad faith, a report to the shareholders was privileged, but that such privilege did not extend to the preservation of the report and evidence in a book for distribution amongst the persons belonging to the corporation. And the corporation was held liable in damages for publishing it in that form.

*Lawless v.
Anglo-
Egyptian
Cotton and
Oil Co.*

Upon the two above-cited American authorities being cited from a previous edition of this work in a subsequent case (*w*), in England, Mellor, J. and Hannen, J., expressed their approval of them. The facts were as follows:—The defendants were a company established for the purpose of growing cotton in Egypt. The plaintiff was their manager there, and it was his duty to furnish defendants with an account of his transactions to enable them to give the shareholders an account of the profits of the undertaking. The auditors were of opinion, and reported, that a depreciation in the stock of the company was owing to the mismanagement of the plaintiff. They came to this opinion, after explanations had been offered to them by one B., but these explanations were offered to them only, and not to the directors. At the ordinary general meeting of shareholders, the directors laid before them a statement of the accounts, and in this statement repeated what had been reported to them by the auditors.

Auditors' report printed and sent to shareholders with directors' report privileged.

(*r*) *Philadelphia, Wilmington and Baltimore Railroad Corporation v. Quigley*, 21 How. (Amer.) Rep. 202.

(*w*) *Lawless v. Anglo-Egyptian Cotton Co.*, L. R., 4 Q. B. 262.

There was nothing whatever to show that they had any reason to doubt the truth of this report, nor was there in what happened at the meeting any extrinsic evidence of malice on their part. By a resolution passed at the meeting the report of the directors with the accounts, and the report of the auditors, were ordered to be printed, and sent to the shareholders at large; and they were accordingly sent to a printer, printed, and circulated among the shareholders, and used by them at an adjourned meeting. An action for libel was brought against the company and tried before Kelly, C. B., who ruled that it was not a privileged communication, and the plaintiff having proved special damage, recovered a verdict for 500*l*. But the Court of Queen's Bench afterwards set aside the verdict, and ordered a nonsuit to be entered on the ground that it was a privileged communication, and that the sending it to the printer merely to be printed did not destroy the privilege, as that was a reasonably necessary mode of making a communication which the directors were bound to make to their shareholders, absent as well as present, they were not bound to employ confidential clerks, to write a letter to each shareholder.

Lawless v. Anglo-Egyptian Cotton and Oil Co.

In the following case (x) also, the slander complained of was held to be a privileged communication. The plaintiff was trustee of a charity, and also farm bailiff to Mr. Cooper. Attempts had been made to remove the plaintiff from the trust, and being unwilling to resign, he requested Cooper to obtain signatures to a protest against his being turned out. Cooper applied to the defendant to sign the protest: he refused, and upon Cooper asking his reasons for refusing, said he would not keep a big rogue like the plaintiff in the trust. Cooper further pressed the defendant for his reason for his opinion, and he then said that the plaintiff had left the parish under

Cowles v. Potts.

Discussion as to conduct of trustee of a charity.

(x) *Cowles v. Potts*, 34 L. J., Q. B. 247. See *Purell v. Sowler*, 2 C. P. D. 215, where it was held that the publication in a newspaper of a report of a discussion at a board of guardians of the conduct of the medical officer was not privileged, as the board was not necessarily a public meeting.

*Cowles v.
Potts.*

discreditable circumstances, and without settling with his creditors, including the defendant. Cooper further stated that in consequence of what the defendant told him he dismissed the plaintiff. The plaintiff brought an action, and the jury found a verdict for him, but they also found that the defendant had not acted with malice. The Court of Queen's Bench afterwards ordered the verdict to be entered for the defendant, on the ground that the communication was privileged, having been *bonâ fide* spoken with reference to the discussion whether it was proper to retain the plaintiff as a trustee of the charity, and Blackburn, J., having stated that the law laid down in *Toogood v. Spyring* (y), had always been approved of, added, "In the more recent decisions, such as *Whiteley v. Adams* (z), the tendency has been to extend the limits of the moral duty or reasonable exigency which authorizes the publication of defamatory matter. But we think that the present case falls strictly within the limits as laid down in *Toogood v. Spyring*."

*Johnson v.
Evans.*

In *Johnson v. Evans* (a) the words complained of were, "She is a thief, and tried to rob me of part of her wages." The plaintiff had been servant to the defendant. Upon a dispute taking place he discharged her, and some difference arising respecting the payment of her wages, he charged her with having attempted to cheat him respecting her wages, and used the words as laid, but the plaintiff failed in proving them to have been spoken at that time. Having, however, sent for a constable in order to take her into custody, he used the same words to the constable when he came, to whom he meant to have given her in charge, but which in fact he did not do. It appeared from the evidence of the constable, that the words were addressed to him in his character of constable, and in the course of the charge and complaint which the defendant made to him against the plaintiff.

y. 1 C. M. & R. 181.

15 C. B., N. S. 392.

a. 3 Esp. 32; but see *Smith v. Hodgeskins*, Cro. Car. 276.

Lord Eldon, C. J., nonsuited the plaintiff, saying, *Johnson v. Evans*.
that:—

“Words used in the course of legal or judicial proceeding, however hard they might bear on the party of whom they were used, were not such as would support an action for slander. In this case they were spoken by the defendant under a belief of the fact, and when he was about to proceed legally to punish it. It would be a matter of public inconvenience, and operate to deter persons from preferring their complaints against offenders, if words spoken in the course of their giving charge of them, or preferring their complaint, should be deemed actionable.”

To this class may also be referred the cases of *Murphy v. Kellett* (*b*), in which an opinion expressed by the medical officer of a union to the guardians, as to the wine of the plaintiff, who had made a tender to supply the patients, was held to be privileged: *M^cElveney v. Connellan* (*c*), in which a report made by the Inspector-general of Prisons in Ireland to the Lord Lieutenant of Ireland, under 7 Geo. 4, c. 74, s. 59, was held to be a state document and privileged; and *Cox v. Feeney* (*d*), in which the publication in a newspaper of a report of an inspector of charities under the Charitable Trusts Act, containing a letter written some years before by the dean to the bishop, who was visitor of a college, reflecting on the conduct of the plaintiff, who was one of the professors of the college, was also held to be privileged.

In *Pittard v. Oliver* (*e*), the plaintiff had been clerk to a board of guardians, and, a dispute having arisen between him and them as to the state of his accounts, he resigned, but made a claim against them for a certain sum which he said was due to him. The defendant, a member of the board, at a meeting of the board at which the plaintiff's claim was discussed, uttered the words for which he was sued by the plaintiff. The judge at the trial ruled that the occasion was privileged. The Court of Appeal held that this privilege was not taken away by

(*b*) 13 Ir. C. L. R. 488.

(*c*) 17 Ir. C. L. R. 55.

(*d*) 4 F. & F. 13.

(*e*) (1891) 1 Q. B. 474.

the presence of reporters at the meeting when the words were uttered.

Communica-
tions where
interest is
concerned to
interested
persons ;

II. Communications made by a person in the conduct of his own affairs where his interest is concerned.

In cases of this sort, in order that the occasion may be privileged, it is necessary that the person to whom the communication is made, as well as the person making it, should have in fact an interest or duty in respect of the subject-matter of the communication (*f*).

such as to
fellow-
servants.

There is a reciprocity of interest of this kind between a railway company and its servants with regard to things done by their other servants which the company intend to treat as misconduct entailing dismissal, and on this ground, where a company, in a printed circular addressed to their servants, published the name of the plaintiff stating that he had been dismissed, and the nature of the offence for which he was dismissed, the occasion was held to be privileged (*g*).

*Hunt v. Great
Northern
Railway Co.*

*Somerville v.
Hawkins.*

In another case (*h*) the defendant had dismissed the plaintiff from his service on a charge of theft, and plaintiff, on coming two days later to receive wages which were due to him, had some communication with the defendant's servants ; whereupon the defendant said to them, "I have dismissed that man for robbing me. Do not speak to him any more in public or in private, or I shall think you as bad as him." This was ruled by Lord Truro to be a privileged occasion, and, in the absence of evidence of express malice, he said there was no case to go to the jury. His ruling was afterwards upheld by the Court of Common Pleas.

In a subsequent case (*i*) the defendant, returning home late at night, heard that the footman had been giving

f *Harrison v. Bush*, 5 E. & B. 344; *Heblitch v. Melhaine*, (1894) 2 Q. B. 51.

g *Hunt v. Great Northern Railway Co.*, 1891) 2 Q. B. 189.

h *Somerville v. Hawkins*, 10 C. B. 583.

i *Manby v. Witt*, 18 C. B. 544.

away provisions which he had obtained from the cook, and thereupon he dismissed them both. Subsequently, in answer to inquiries, he told the cook that he had dismissed her because she and the footman had been robbing him. He also told the footman that he had discharged him because he and the cook had been robbing him. Each brought an action, but both were nonsuited, there being no evidence of malice. *Manby v. Witt.*

Upon these principles of common interest, letters in the following cases have been held to be privileged: a letter from a servant to his master reflecting upon the character of a third person who had either complained, or threatened to complain, to the master about the servant (*k*); a letter written by a discharged butcher to his customer, reflecting on the honesty of the customer's housekeeper (*l*); a letter written by one part owner of a brig to another part owner who had recommended the plaintiff as master, reflecting upon the master's conduct (*m*).

And, again, upon this ground a letter written by the defendant to a firm of bankers, charging the plaintiff, who was a solicitor, with improper conduct in the management of their affairs, in which the defendant was himself interested, was held to be privileged (*n*). *M'Dougall v. Claridge.*

A timekeeper, employed by the Board of Works in the building of Westminster Bridge, wrote a letter to the secretary of the Board reflecting on the conduct of the contractor. At the trial of the action (*o*) Blackburn, J., ruled that the occasion was privileged. *Searll v. Dixon.*

(*k*) *Wright v. Woodgate*, 2 Cr. M. & R. 573.

(*l*) *Coward v. Wellington*, 7 C. & P. 531; see also *Amann v. Damm*, 29 L. J., C. P. 313.

(*m*) *Wilson v. Robinson*, 7 Q. B. 68.

(*n*) *M'Dougall v. Claridge*, 1 Camp. 267; see *Wright v. Woodgate*, 2 Cr. M. & R. 573; *Shipley v. Todhunter*, 7 C. & P. 680. In the latter case Tindal, C. J., in summing up to the jury said, "There can be no doubt that a man has a right to communicate to any other any information he is possessed of in a matter in which they have a mutual interest."

(*o*) *Searll v. Dixon*, 4 F. & F. 250. But the report of this case is not very clear. *Per* Lord Esher, M. R., in *Hebditch v. McIlwaine*, (1894) 2 Q. B. 54.

*Martin v.
Strong.*

But words spoken by one subscriber to a charity, in answer to inquiries by another subscriber respecting the conduct of a medical officer of the charity, have been held not to be privileged; and in an action for slander the plaintiff recovered a verdict and damages (p). In that case, however, there did not appear to be a sufficient reason for the conversation between the parties to constitute a privileged communication. And in a subsequent case Lord Wensleydale said that if those observations had been made in a matter of contest, and the contest was whether the person slandered should be elected, it appeared to him that it would have been a privileged communication. The case alluded to is *Kine v. Sewell* (q), in which the defendant, having been requested by A. to recommend a person to value some work done for him by the plaintiff's master under contract, told A. that the plaintiff had stolen some of the materials, and afterwards repeated the charge to the plaintiff's master; but it was held that the defendant was not liable to an action without proof of express malice on his part; for although the charge appeared to be untrue, yet the communication having been made *bonâ fide* to a person interested in discovering a wrongdoer, and who made inquiries, and believed to be true by the defendant, was privileged.

*Kine v.
Sewell.*

Complaints
made to
master with
a view to
redress.

Where a person having ground or supposed ground of complaint against a servant or public officer, makes a representation of his conduct to his master or superior officer with a view to obtaining redress, the communication has been held to be privileged on the ground of interest in the party making it, if *bonâ fide* and honestly made, although the person addressed has not in reality the supposed power.

Lake v. King.

In *Lake v. King* (r) a petition presented to a committee of the House of Commons, containing criminatory

(p) *Martin v. Strong*, 5 A. & E. 535; see *Charles v. Potts*, 31 L. J., Q. B. 247, *ante*, p. 401.

(q) 3 M. & W. 297; see *Kershaw v. Bailey*, 1 Exc. 743.

(r) 1 Wms. Saund. 131 b; and see *Dunne v. Anderson*, 3 Bing. 88.

matter, was held privileged, the committee having power to inquire, although no power to give redress to the petitioner. So where a person (s), having a just claim against an officer in the army, and who therefore in some measure was subject to the control of the Secretary at War, applied by petition to the latter, in order to obtain through his interference the payment of his debt; it was held that the petition having been published for the purpose of obtaining redress and not for the purpose of slander, could not be made the subject of an action. And Best, J., cited *The King v. Bayley* (t), in which a letter addressed to General Willes and the four principal officers of the Guards, to be by them presented to the king, stating that the prosecutor had obtained from the defendant a warrant for the payment of money due to him from government, under a promise of paying the defendant such money, and that the prosecutor had received the money, and had not paid it over to the defendant, was held to be no libel, but a representation of an injury drawn up in a proper way for redress, and added:—

Fairman v. Ives.

R. v. Bayley.

“That case is like the present. Neither the officers nor the king could give the defendant direct assistance in receiving the money wrongfully withheld. But the king had authority to dismiss an officer from his service, and most probably would dismiss any one who hesitated to do what honour and justice required. In the present case there was at least probable cause for thinking that the Secretary at War would advise His Majesty that the plaintiff was not worthy to remain in the army unless he did the defendant immediate justice.”

So in an action (u) for libel upon the plaintiff, in his situation of guard of the Exeter mail, by reason of which he was dismissed from his situation. The libel complained of was a letter written to Sir Francis Freeling, chief secretary to Her Majesty's postmaster-general, by the defendant, who was unconnected with the post-office,

Blake v. Pilfold.

(s) *Fairman v. Ives*, 5 B. & Ald. 642; and see *Wenman v. Ash*, 13 C. B. 837. The report of *Fairman v. Ives* seems to be not quite accurate. Per Lord Esher, M. R., in *Hebditch v. McIlwaine*, (1894) 2 Q. B. 54.

(t) Bac. Abr. Libel, A. 2.

(u) *Blake v. Pilfold*, 1 Mood. & Rob. 198.

complaining of some misconduct of the plaintiff towards the defendant's wife in a journey by the mail. It was held by Taunton, J., that the letter was clearly *not absolutely* privileged, on the ground of its being an *official* communication (*v*). But that learned judge also expressed an opinion, that the occasion on which the letter was published, rendered its publication excusable, in the absence of express malice. And in another similar case (*w*). Alderson, B., laid down similar law.

*Proctor v.
Webster.*

A letter to the Privy Council referring to the conduct of an inspector removable by the Council has also been held to be privileged, though not absolutely (*x*).

*Harrison v.
Bush.*

Memorial to
Home Secretary
complaining of a
magistrate.

And a memorial, transmitted to the Home Secretary, complaining of the conduct of the plaintiff who was a county magistrate, during an election of an M.P. for a borough in the county, has been held to be privileged, although in practice the advice of the Keeper of the Great Seal is generally acted upon as to the removal of justices; as the memorial might be considered as addressed to the Queen through the Home Secretary, who might himself have caused an inquiry to be made, have communicated with the Keeper of the Great Seal, and have in effect recommended the removal of the plaintiff (*y*).

Privilege
taken away
on proof of
express malice.

Though the statements complained of were made upon an occasion to which a qualified privilege attaches, yet, as previously mentioned, they will not come within the definition (*z*) of privileged communications so as to afford complete protection to the defendant, if in making them he was actuated by express malice, or, as it is also called, actual malice, or malice in fact.

The privilege of the occasion having rebutted the

(*v*) Within the cases of *Home v. Bentuck*, 2 B. & B. 130; *Wyatt v. Gore*, Holt, N. P. 299. See *Dawkins v. Paudet*, L. R., 5 Q. B. 94; *Dawkins v. Lord Rokeby*, L. R., 7 H. L. 714; and *Chatterton v. Secretary of State for India in Council*, (1895) 2 Q. B. 189.

(*w*) *Woodward v. Lander*, 6 C. & P. 548.

(*x*) *Proctor v. Webster*, 16 Q. B. D. 112.

(*y*) *Harrison v. Bush*, 5 E. & B. 344, overruling to a certain extent *Blagg v. Stuart*, 10 Q. B. 899, in which case, however, there was express malice.

(*z*) Cited *ante*, p. 390, from *Stuart v. Bell*, (1891) 2 Q. B. 341.

malice presumed by law to exist in the making of a defamatory statement, the burden of proving express malice lies on the plaintiff; and the question whether or not there was malice is one for the jury (*a*).

It is not, however, sufficient to entitle the plaintiff to have the question of malice left to the jury, that the facts proved should be merely *consistent with* the presence of *malice*, as well as with its absence; for the existence of malice is consistent with the evidence in all cases, except those in which something inconsistent with malice is shown in evidence; so that to say that in all cases where the evidence was consistent with malice it ought to be left to the jury, would be, in effect, to say that the jury might find malice in any case in which it was not *disproved*, which would be inconsistent with the admitted rule that in cases of privileged communications malice must be proved, and, therefore, its absence presumed till such proof is given. It is certainly not necessary, in order to enable a plaintiff to have the question of malice submitted to the jury, that the evidence should be such as necessarily leads to the conclusion that malice existed, or that it should be inconsistent with the non-existence of malice; but it is necessary that the evidence should raise a probability of malice, and be more consistent with its existence than with its non-existence (*b*).

It is not sufficient that facts are *consistent with* malice.

The meaning with which the word "malice" is used in this connection has been explained in many ways. Lord Denman, C. J., has referred to it as being "an indirect motive" (*c*). In a more recent case (*d*), Brett, L. J., said it meant "a wrong feeling in a man's mind," while, in the same case, Cotton, L. J., said that it was "for the plaintiff to satisfy the jury that the

Meaning of "express malice."

(*a*) *Clark v. Molyneux*, 3 Q. B. D. 237; *Stuart v. Bell*, (1891) 2 Q. B. 341.

(*b*) *Per Maule, J.*, in *Somerville v. Hawkins*, 10 C. B. 583; and see *Taylor v. Hawkins*, 16 Q. B. 308; *Harris v. Thompson*, 13 C. B. 333; *Spill v. Maule*, L. R., 4 Exc. 232; *Laughton v. Bishop of Sodor and Man*, L. R., 4 P. C. 495.

(*c*) *Fountain v. Boodle*, 3 Q. B. 5.

(*d*) *Clark v. Molyneux*, 3 Q. B. D. 237.

defendant was acting from some other motive than a sense of duty." Lindley, L. J., spoke (*e*) of the word as being not confined to personal spite and ill-will, but including every unjustifiable intention to inflict injury on the person defamed. And again, Lord Esher, M. R., said (*f*), that the question is whether the defendant was using the occasion honestly or abusing it.

Evidence of
malice :

Such an abuse of the occasion as may be evidence of malice for the consideration of the jury may be shown in a variety of ways.

from the
language used.

The language used may afford such evidence (*g*). The fact that the statement complained of was untrue is in itself no evidence of malice, for if it were true there would be no need for the defendant to plead that the occasion was privileged. If, however, the defendant has stated what he knows to be untrue, no one ever doubted (*h*) that he would be abusing the occasion. The language of a privileged communication is not to be scrutinized too strictly (*i*). Persons differ in their expressions, and strong or angry language is not necessarily malicious (*j*). Language used in excess of the occasion (*k*) or too violent for the occasion and circumstances to which it is applied (*l*), is evidence from which the jury may infer malice; but a finding by the jury that in making the statement complained of the defendant had exceeded the privileged occasion has no effect (*m*), for the law will not infer malice from such a finding.

(*e*) *Stuart v. Bell*, (1891) 2 Q. B. 311.

(*f*) *Royal Aquarium, Limited v. Parkinson*, (1892) 1 Q. B. 431. In this case Lord Esher also said: "If a person from anger or some other wrong motive has allowed his mind to get into such a state as to make him cast aspersions on other people, reckless whether they are true or false, it has been held, and I think rightly held, that a jury is justified in finding that he has abused the occasion."

(*g*) *Wright v. Woodgate*, 2 Cr. M. & R. 573.

(*h*) Per Lord Esher, M. R., in *Royal Aquarium, Limited v. Parkinson*, (1892) 1 Q. B. 431.

(*i*) *Laughton v. Bishop of Sodor and Man*, L. R., 4 P. C. 495; *Jennour v. Dehnge*, (1891) A. C. 73.

(*j*) *Shopley v. Toddhunter*, 7 C. & P. 680.

(*k*) *Fryer v. Kinnerley*, 15 C. B., N. S. 122.

(*l*) *Spill v. Maule*, L. R., 4 Ex. 232.

(*m*) *Nevill v. Fine Arts and General Insurance Co.*, (1895) 2 Q. B. 156;

And in a case (*u*) where Coltman, J., left it to the jury to say whether the words were spoken with the honest intent of giving a neighbour important information of what was going on in his family, or whether it was done in an idle, gossiping, and malicious spirit, and the jury found a verdict for the plaintiff, the Court afterwards refused to disturb their finding.

Though under some circumstances (*o*) a person may be justified in volunteering a communication to another, yet this may be done in such a way, as by officious interference, as to afford evidence of malice (*p*).

Officious
interference.

So, too, sending a message by postcard or telegram may, under some circumstances, be evidence of malice (*q*).

And the mere fact that a third person was present when defamatory words were spoken upon an occasion otherwise privileged will not, *ipso facto*, destroy the privilege, though if an opportunity of publishing the libel in the presence of a third person is sought out, that may be evidence of malice. Thus, where (*r*) it appeared that the plaintiff was a journeyman carpenter, and had been in the employ of B., a master carpenter, in the constant employ of the Earl of Devon at Powderham. The defendant was tenant to the Earl, and required some repairs at his farm, and plaintiff, pursuant to B.'s orders, went with another workman to the defendant's house for the purpose of doing them. The work was done in a negligent manner, and not to the satisfaction of B. During the progress of the work the plaintiff got

Presence of
third person
may be
evidence of
malice.

Toogood v.
Spyring.

affirmed (1897) A. C. 68. If any one on an occasion which is privileged as between himself and some other person makes some defamatory statement affecting a third person which has nothing to do with the privileged occasion, that third person would have a right of action against the person making the statement, and as between him and the defendant there would be no privileged occasion. *Per* Lord Esher, M. R.

(*u*) *Ramsey v. Webb*, 11 L. J., C. P. 129.

(*o*) *Pattison v. Jones*, 8 B. & C. 578; *Waller v. Lock*, 7 Q. B. D. 619.

(*p*) *Rogers v. Clifton*, 3 B. & P. 587.

(*q*) *Williamson v. Freer*, L. R., 9 C. P. 393; *Sadgrove v. Hole*, (1901) 2 K. B. 1.

(*r*) *Toogood v. Spyring*, 1 Cr. M. & R. 181; and see *Padmore v. Lawrence*, 11 A. & E. 380; *Taylor v. Hawkins*, 16 Q. B. 308; *Pittard v. Oliver*, (1891) 1 Q. B. 474.

*Toogood v.
Spring.*

drunk, and circumstances occurred which induced the defendant to believe that the plaintiff had broken open the cellar and obtained access to his cyder. B. had requested the defendant to inspect the work, and afterwards, whilst the plaintiff and one T. were at work at Powderham, the defendant came up, and *in his presence*, charged the plaintiff with breaking open the cellar, getting drunk, and spoiling his job. The plaintiff denied the charge, but defendant said he would swear it, and so would his men. In a subsequent conversation, *in the plaintiff's absence*, the defendant, in answer to a question by T., whether he really thought the plaintiff had broken open his cellar, said he was sure of it, and his people would swear to it. Defendant then went away in search of B., whom he saw, and to whom he repeated that the plaintiff had broken open the door, got drunk, and spoiled his job. B. thereupon went to the plaintiff, and told him that until his character was cleared he could not remain in the employ of the Earl. The next day B. investigated the charge, and told the plaintiff he considered it not made out, and his character was cleared, and he might go to work again; but the plaintiff refused to work, saying his character was not cleared, and brought his action against the defendant. It was held, that the communication to B. was privileged, and that the statement made to T. upon the second meeting in the plaintiff's absence was not, but that the statement made *to* the plaintiff, though in the presence of T., was privileged. And in delivering the judgment of the Court of Exchequer, Lord Wensleydale, after laying down in a passage that has been already referred to (s), the principles upon which a communication may be held privileged, said :—

“ Among the many cases which have been reported on this subject, one precisely in point has not, I believe, occurred; but one of the most ordinary and common instances in which the principle has been applied in practice is that of a former master giving the character of a discharged

(s) *Ante*, p. 391.

servant: and I am not aware that it was ever deemed essential to the protection of such a communication, that it should be made to some person interested in the inquiry, *alone*, and not in the presence of a third person. If made with honesty of purpose to a party who has any interest in the inquiry (and that has been very liberally construed) (*t*), the simple fact that there has been some casual bystander cannot alter the nature of the transaction. The business of life could not be well carried on if such restraints were imposed upon this and similar communications, and, if, on every occasion in which they were made, they were not protected unless strictly private. In this class of communication is no doubt comprehended the right of a master *bonâ fide* to charge his servant for any supposed misconduct in his service, and to give him admonition and blame: and we think that the simple circumstance of the master exercising that right in the presence of another, does by no means of *necessity* take away from it the protection which the law would otherwise afford. Where, indeed, an opportunity is sought for making such a charge before third persons, which might have been made in private, it would afford strong evidence of a malicious intention, and thus deprive it of that immunity which the law allows to such a statement, when made with honesty of purpose; but the mere fact of a third person being present does not render the communication absolutely unauthorized, though it may be a circumstance to be left with others, including the style and character of the language used, to the consideration of the jury, who are to determine whether the defendant has acted *bonâ fide* in making the charge, or been influenced by malicious motives. In the present case the defendant stood in such a relation with respect to the plaintiff, though not strictly that of master, as to authorize him to impute blame to him, provided it was done fairly and honestly, for any supposed misconduct in the course of his employment, and we think that the fact, that the imputation was made in T.'s presence, does not *af itself* render the communication unwarranted and officious, but at most is a circumstance to be left to the consideration of the jury. We agree with the learned judge, that the statement to T. in the plaintiff's absence was unauthorized and officious, and therefore not protected, although made in the belief of its truth, if it were, in point of fact, false."

Toogood v. Spring.

Before quitting this part of our subject it will be convenient to refer to those cases arising out of remarks made by masters in writing upon their servants' written characters.

Action for defacing a written character.

In 1835 an action of trespass (*u*) was brought by an ex-policeman against one of the commissioners of police for stamping the words "Dismissed the police service" upon a certificate of good character, which the plaintiff had brought with him on entering the police force.

(*t*) *Child v. Affleck*, 9 B. & C. 403.

(*u*) *Taylor v. Rowan*, 7 C. & P. 70.

Defacing a
written
character :
Taylor v.
Rowan.

Lord Abinger, C. B., directed a verdict for the defendant on the ground that trespass was not the proper form of action, and also on other grounds ; but he stated his opinion that if a servant enter into a service bringing a written character with him, and afterwards behaved ill, it could not be considered that the master did wrong if, when returning the character to the servant, he wrote upon it that the person to whose character it related had afterwards been in his service, and was dismissed for ill behaviour.

Wrenhak v.
Morgan.

In an action (r) for libel and malicious damage to a document by writing defamatory words upon a servant's written character, Mathew, J., directed the jury to return a verdict of one shilling in respect of the damage to the document, but the Queen's Bench Division ordered a new trial on this point, saying the question of damage was one for the jury ; Huddleston, B., pointing out the difference between letters ordinarily written in answer to an inquiry as to a servant's character—which would probably be the property of the master proposing to engage the servant—and a general testimonial of good character intended to be used as a voucher on future occasions.

or a cabman's
license.

Under the Hackney Carriage Act, 1843 (6 & 7 Vict. c. 86), cases of a somewhat similar nature have arisen. By that Act drivers have to obtain licenses, and sect. 21 directs the proprietor of every hackney carriage to retain the license in his possession while the driver remains in his service. Sect. 8 also directs the proprietor to enter on the license the days on which the driver enters and quits his service. If the proprietor writes on the license anything more than he is authorized by the Act to write upon it, the cabdriver may maintain an action against him for defacing his license (w). A license may thus be defaced by the proprietor writing upon it one date only when the cabdriver entered his

(r) *Wrenhak v. Morgan*, 20 Q. B. D. 635.

(w) *Hurrell v. Ellis*, 2 C. B. 295 ; *Rogers v. Macnamara*, 14 C. B. 27.

service and two dates for quitting it, and adding his signature, the effect of such an entry being to show other cab-proprietors that the driver had taken part in a cab strike. Such a defacement is a "matter of complaint" between a proprietor and a driver within sect. 22 of the Act, which a magistrate has jurisdiction to hear and determine, and in respect of which he may award such compensation as may seem proper (x).

Jurisdiction
of magistrate.

FALSE AND FORGED CHARACTERS—STAT. 32 GEO. 3, C. 56.

If a master knowingly give a false character of a servant *to a person about to hire him*, and the servant afterwards rob or injure his new master, *he* may, in an action for the deceit, recover from the former master the damages he has sustained in consequence of such false character having been given (y).

Liability of
master to
person to
whom false
character of
servant given.

But, in the absence of fraud, it will not be enough for the plaintiff to show that the defendant has been guilty of negligence, however gross. The question of liability for negligence cannot arise at all until it is established that the man who is alleged to have been negligent owed some duty to the person who seeks to make him liable for negligence. Such a duty may arise either out of a contract or out of the relations existing in certain well-established cases, such as where a person invites another on to his premises, or where a person is making use of a dangerous chattel. But the knowledge of the

(x) *Norris v. Birch*, (1895) 1 Q. B. 639.

(y) *Wilkin v. Read*, 15 C. B. 192. It is conceived that Lord Tenterden's Act, 9 Geo. 4, c. 14, s. 6, which provides "that no action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given, concerning or relating to *the character, conduct, credit, ability, trade or dealings of any other person to the intent or purpose that such other person may obtain credit, monies or goods upon*, unless such representation or assurance be made in writing signed by the party to be charged therewith"—would not apply to characters given to servants to enable them to obtain situations, as that Act was passed to remedy an evil which had grown up of evading the Statute of Frauds (which required guarantees to be in writing), by suing parties for false representation as to characters of third persons whereby *goods* had been obtained, and thus indirectly fixing them with the debts of such third persons. See *Lyde v. Barnard*, 1 M. & W. 101; *Tutton v. Wade*, 18 C. B. 371.

defendant that the plaintiff would or might act upon his statements does not create any duty in him toward the plaintiff, and in the absence of contract he will not be liable for what he may have said, unless he said it fraudulently (z).

Moreover in such cases a criminal responsibility is sometimes incurred by a person giving a false character (a).

Servants
Characters
Act, 1792.

By the Servants Characters Act, 1792 (32 Geo. 3, c. 56), after reciting that—

“Whereas many false and counterfeit characters of servants have either been given personally or in writing by evil-disposed persons being or pretending to be the master, mistress, retainer or superintendent of such servants, or by persons who have actually retained such servants in their respective service, contrary to truth and justice and to the peace and security of His Majesty's subjects; and whereas the evil herein complained of is not only difficult to be guarded against, but is also of great magnitude and continually increasing, and no sufficient remedy has hitherto been applied”:

It is enacted that—

Any person
personating
master or
giving false
character:

1. If any person or persons shall falsely personate any master or mistress, or the executor, administrator, wife, relation, housekeeper, steward, agent or servant of any such master or mistress, and shall either personally or in writing give any false, forged or counterfeited character to any person offering him or herself to be hired as a servant into the service of any person or persons, then and in such case every such person or persons so offending shall forfeit and undergo the penalty or punishment hereinafter mentioned and in that behalf provided.

or asserting
that a servant
has been
hired for a
period of
time, or in a
station:

2. If any person or persons shall knowingly and wilfully pretend or falsely assert in writing that any servant has been hired or retained for any period of time whatsoever, or in any station or capacity whatsoever other than that for which or in which he, she or they shall have hired or retained such servant in his, her or their service or employment, or for the service of any other person or persons, that then, and in either of the said cases, such person or persons so offending as aforesaid shall forfeit and undergo the penalty or punishment hereinafter mentioned and in that behalf provided.

or was dis-
charged at
any other
time, or had

3. If any person or persons shall knowingly and wilfully pretend, or falsely assert in writing, that any servant was discharged, or left his, her or their service at any other time than that at which he or she was

^(z) *Le Luvre v. Gould*, [1893] 1 Q. B. 491, explaining *Derry v. Peck*, 14 App. Cas. 337. See the notes to *Pusley v. Freeman*, 2 Sm. L. C.

^(a) Knowingly uttering a forged testimonial to character with intent to deceive, and thereby obtain a situation of emolument, is a forgery at common law: *R. v. Sharman*, 23 L. J., M. C. 511; *R. v. Mouh*, 27 L. J., M. C. 204.

discharged, or actually left such service; or that any such servant had not been hired or employed in any previous service, contrary to truth, that then, and in either of the said cases, such person or persons shall forfeit and undergo the penalty or punishment hereinafter mentioned and in that behalf provided.

4. If any person shall offer himself or herself as a servant, asserting or pretending that he or she hath served in any service in which such servant shall not actually have served; or with a false, forged or counterfeit certificate of his or her character: or shall in anywise add to or alter, efface or erase any word, date, matter or thing contained in or referred to in any certificate given to him or her by his or her last or former master or mistress, or by any other person or persons duly authorized by such master or mistress to give the same, that then, and in either of the said cases, such person or persons shall forfeit and undergo the penalty or punishment hereinafter mentioned and in that behalf provided.

5. If any person or persons having before been in service shall, when offering to hire himself, herself or themselves as a servant or servants in any service whatsoever, falsely and wilfully pretend not to have been hired or retained in any previous service as a servant, that then, and in such case, such person or persons shall forfeit and undergo the penalty or punishment hereinafter mentioned and in that behalf provided.

6. If any person or persons shall be convicted of any or either of the offence or offences aforesaid, by his, her or their confession, or by the oath of one or more credible witness or witnesses before two or more justices of the peace for the county, riding, division, city, liberty, town or place where the offence or offences shall have been committed (which oath such justices are hereby empowered and required to administer), every such offender or offenders shall forfeit the sum of twenty pounds, one moiety whereof shall be paid to the person or persons on whose information the party or parties offending shall have been convicted, and the other moiety thereof shall go and be applied for the use of the poor of the parish wherein the offence shall have been committed; and if the party who shall have been so convicted shall not immediately pay the said sum of twenty pounds so forfeited, together with (*b*) the costs and charges attending such conviction, or shall not give notice of appeal, and enter into recognizance in the manner hereinafter mentioned and in that behalf provided, such justice shall and may commit every such offender to the house of correction, or some other prison of the county, riding, division, city, liberty, town or place in which he or she shall have been convicted, there to remain and be kept to hard labour (*b*).

[Sect. 7 was repealed by the Statute Law Revision Act, 1871 (34 & 35 Vict. c. 116).]

8. Provided always that if any servant or servants who shall have been guilty of any of the offences aforesaid shall, before any information has been given or lodged against him, her or them for such offence, discover and inform against any person or persons concerned with him,

not been hired in any previous service, contrary to the fact;

or any person offering himself as a servant pretending to have served where he has not served, or with a false certificate, or altering any certificate;

or who having been before in service shall pretend not to have been in such service; shall on conviction, forfeit 20*l*.

Application of forfeiture.

Persons not paying the penalty with costs, or not giving notice of appeal, &c., may be committed.

Offenders discovering accomplices before information indemnified.

(*b*) Words repealed by 47 & 48 Vict. c. 43, are here omitted.

her or them in any offence against this Act, so as such offender or offenders be convicted of such offence in manner aforesaid, every such servant or servants so discovering and informing shall thereupon be discharged and indemnified of, from and against all penalties and punishments to which at the time of such information given, he, she or they might be liable by this Act, for or by reason of such, his, her or their own offence or offences.

Sect. 9 was repealed by 47 & 48 Vict. c. 43.]

Parties
aggrieved
may appeal to
the quarter
sessions.

Proceedings
not to be
quashed for
want of form,
or removed by
certiorari.

10. Provided always that if any person shall think himself or herself aggrieved by anything done in pursuance of this Act, such person may appeal to the justices of the peace at the next general or quarter sessions of the peace (c); and no conviction or order made concerning any matters aforesaid, or any other proceedings to be had touching the conviction or convictions of any offender or offenders against this Act, shall be quashed for want of form, or be removed by *certiorari*, or any other writ or process whatsoever, into any of his Majesty's courts of record at Westminster.

(c) Words repealed by 47 & 48 Vict. c. 43, are here omitted.

CHAPTER VIII.

OFFENCES BY SERVANTS AGAINST THEIR MASTERS.

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MURDER OF MASTER BY SERVANT.

FORMERLY, both by the common law and also by the stat. 25 Edw. 3, st. 5, c. 2, it was petit treason for a servant to kill his master or mistress (*a*). So much of the stat. 25 Edw. 3, however, as relates to petit treason was repealed by 9 Geo. 4, c. 31 (*b*) ; and now by 24 & 25 Vict.

24 & 25 Vict.
c. 100, s. 8.

(*a*) See 3 Inst. 20 ; Dalt. Just., ch. 142. Lord Coke, 3 Inst. 48, mentions the case of one Margaret Davy, a young woman who was attainted of high treason for poisoning her mistress (under statute 22 Hen. 8, c. 9), and with some others was boiled to death in hot water in Smithfield. But, he adds, this statute was too severe to live long, and therefore was repealed, 1 Edw. 6, c. 12, and 1 Mary. c. 1.

(*b*) The Irish Act was 10 Geo. 4, c. 34, s. 3. Both these Acts were repealed by 24 & 25 Vict. c. 95.

c. 100, s. 8, it is enacted that every offence which before the 1st of July, 1828, would have amounted to petit treason shall be deemed to be murder only, and no greater offence; and all persons guilty in respect thereof, whether as principals or as accessories, shall be dealt with, indicted, tried and punished as principals and accessories in murder (c).

R. v. Harley. Where a servant put poison into a coffee-pot, and, when her mistress came down to breakfast, said she had put the coffee-pot there for her, such servant was held indictable under 9 Geo. 4, c. 31, s. 11, for "causing poison to be taken" (d).

ASSAULTS COMMITTED BY SERVANTS ON THEIR MASTERS.

The 21st sect. of 5 Eliz. c. 4, which provided a special punishment for assaults committed by servants on masters, was repealed by 9 Geo. 4, c. 31, s. 1, and the offence is now punishable in the same way as assaults committed by other persons (e).

The Conspiracy and Protection of Property Act, 1875, which will be found in the Appendix, also contains provisions against violence and intimidation in trade disputes.

BURGLARY BY A SERVANT IN HIS MASTER'S HOUSE.

A servant who lives in his master's house may be guilty of burglary in that house, as well as a stranger, for the opportunity which his situation affords him of committing that crime aggravates rather than extenuates his guilt (f). Where, therefore, one of the servants in the house opened his lady's chamber door (which was

Opening
door, &c.,
with design
to commit
felony,

(c) See further on this subject, Russ. on Crimes.

(d) *R. v. Harley*, 1 C. & P. 369.

(e) See 9 Geo. 4, c. 31, ss. 27, 28, 29; the Irish Act was 10 Geo. 4, c. 34, s. 28. Both these Acts are now repealed. See *ante*, note (h). That a servant may justify an assault to obtain possession of his master's property, see *Blades v. Higgs*, 10 C. B., N. S. 713.

(f) See 4 Bl. Com. 227; Bac. Abr. tit. Burglary. As to burglary in general, see 1 Russ. on Crimes, B. 4, ch. 1.

fastened with a brass bolt) with design to commit a rape, *R. v. Gray*. C. J. King ruled it to be burglary, and the defendant was convicted and transported (*g*).

And where (*h*) a servant, in the night-time, opened the street door and let in a robber, and showed him the sideboard from whence he took the plate, and then again opened the door and let him out, it was held, at a meeting of all the judges, to be burglary in the servant as well as in the other, and he was afterwards executed. But where a servant opened the door and let in a robber for the purpose of catching him, having previously communicated with the police, it has been held that the robber even could not be convicted of burglary (*i*). *R. v. Johnson*.

And in *R. v. Meeres* (*j*), a case is cited, where a journeyman who had embezzled money received for his master, and left it in his chamber in his master's house, and being discharged, entered the house in the night and took the money from the chamber, it was held to be no burglary, because the taking the money did not amount to felony,—that is, to larceny,—the money not having been taken out of the possession of the master. *to let in robber, Cornwall's case.*

In the case of a servant opening a door of his master's house for a felonious purpose, without any plan or conspiracy with other persons to commit a robbery, it seems to have been considered that the question, whether such act will amount to a breaking, must depend upon the point whether the door might have been opened by the servant in the course of his trust and employment. Thus, it was said, that if a servant unlatch a door or turn a key in a door of his master's house, and steal property out of the room, such opening of the door, being within his trust, is not a breaking: but that if a servant break open a door, whether outward or inward (as a closet, study or counting-house), and steal goods, *to obtain money previously embezzled.*

Distinction between cases where opening door is within servant's trust, and where not.

(*g*) *R. v. Gray*, 1 Str. 481.

(*h*) *Cornwall's case*, 2 Str. 881; and see 19 St. Tr. 782, note; 1 Hale, P. C. 533; 2 East, P. C. 486.

(*i*) *R. v. Johnson*, Carr. & M. 218; see *R. v. Eggington*, 2 B. & P. 508.

(*j*) 1 Show. 53.

such opening, not being within his trust, will amount to a breaking of the house, either within the statutes relating to the breaking of dwelling-houses in the daytime or within the law of burglary (*k*).

STEALING IN A SHOP, WAREHOUSE OR COUNTING-HOUSE.

Larceny Act,
1861, s. 56.

By the Larceny Act, 1861 (24 & 25 Vict. c. 96), it is enacted, sect. 56 (*l*),—

Punishment.

"That whosoever shall break and enter any dwelling-house, school-house, shop, warehouse or counting-house, and commit any felony therein, or being in any dwelling-house [&c., as before] shall commit any felony therein and break out of the same, shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding fourteen years, and not less than [three years (*m*)], or to be imprisoned for any term not exceeding two years, with or without hard labour."

What is a
shop.

Upon a similar enactment in 7 & 8 Geo. 4, c. 29, s. 15, it was held by Alderson, B. (*n*), that to come within it "the place must be more than a mere workshop, it must be a shop for the sale of articles. A workshop such as a carpenter's shop or a blacksmith's shop would not be within the Act." Lord Denman, C. J., however, in a subsequent case (*o*), refused to be guided by the opinion of Alderson, B., and held that a blacksmith's shop was within the Act. And in another case (*p*), a machine-house where a weighing-machine was kept, at which all goods sent out were weighed and a book kept in which were entered all goods weighed and sent in, and in which house the account of the time of the men was taken and their wages paid (although the books were brought there

What is a
counting-
house.

R. v. Potter.

(*k*) 2 Russ. on Crimes, 11, citing 2 Hale, 354, 355; but the learned editor of the 4th edit. (Greaves) adds, "*sed quere*, and see *Edmond's case*, 1 Hale, 551, where a servant who unlatched the stairfoot door and went with a hatchet to kill his master held guilty of burglary." See also *R. v. Wenmouth*, 8 Cox, Cr. C. 318, where a servant burst open the door of a shop in the night to steal money from the till.

(*l*) By sect. 57, housebreaking with intent to commit felony, which was formerly only a misdemeanour at common law, is made a felony.

(*m*) Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*n*) In *R. v. Sanders*, 9 C. & P. 79.

(*o*) *R. v. Carter*, 1 C. & K. 173.

(*p*) *R. v. Potter*, 23 L. J., M. C. 170.

for the purpose, being usually kept elsewhere), was held to be a counting-house.

STEALING IN A DWELLING-HOUSE TO THE VALUE OF £5
OR MORE.

It is further enacted by 24 & 25 Vict. c. 96, s. 60 (*q*), that "whosoever shall steal in any dwelling-house any chattel, money or valuable security (*r*) to the value in the whole of five pounds or more, shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the Court" to the same punishment as under sect. 56, *supra*. Larceny Act,
1861, s. 60.

Punishment.

It is not thought necessary to encumber this work with all the decisions on this or the previous statute 7 & 8 Geo. 4 (*s*), which do not apply exclusively to servants; though they obviously apply to them as well as other persons. The following decisions, however, having taken place on indictments under 7 & 8 Geo. 4, against servants, could not well be omitted here consistently with the object of this work.

In a case (*t*) which happened soon after the passing of the Act, a shopman was charged with stealing in a dwelling-house sixty-eight yards of lace, the property of his master. The prisoner had sent the lace (which was in several distinct pieces) from Abingdon to London in a parcel by the coach, and no one piece of lace was worth 5*l.*; whereupon his counsel suggested that *in favorem vite* it might be taken that the pieces of lace might have been stolen at different times; but Bolland, B., said,—

"I cannot assume that to have been so. We find that the lace is all sent in one parcel, and all brought out of the prosecutor's house at once, and unless you can give some evidence to show that it was stolen at different times you do not raise your point: but even if you did I should

(*q*) As to stealing in a dwelling-house with menaces, see sect. 61.

(*r*) As to the meaning of "valuable security," see the interpretation clause, sect. 1, and *R. v. Lowrie*, L. R., 1 C. C. R. 61.

(*s*) See them collected in 2 Russ. on Crimes.

(*t*) *R. v. Jones*, 4 C. & P. 217.

think it would be of no avail, for on the last Winter Circuit it appeared that a person at Brighton stole goods in the same way that you wish me to suppose that this person did: for it was shown that he stole the articles one or two at a time, and under value, but that he carried them out of his master's house altogether, the articles amounting in all to more than 5*l.* value: and Mr. Baron Garrow, after much consideration, held that as the articles were all brought out of the prosecutor's house together, it was a capital offence."

The prisoner was found guilty.

R. v. Phoe-
-theon.

Where (*n*) an under-butler was indicted for stealing his master's plate to the value of 18*l.* 5*s.*, in his dwelling-house, and found guilty, but the jury recommended him to mercy on the ground that they believed that he intended to replace the property, which it appeared he had pledged, a finding which the prisoner's counsel contended amounted to a verdict of not guilty; Gurney, B., without expressing any opinion on the point, directed that the prisoner should be tried on another indictment which had been found against him for stealing a silver saucepan belonging to his master. This also the prisoner had pledged; and his counsel contended that he meant to replace this also. But in summing up, Gurney, B., said,—

"If this doctrine of an intention to redeem property is to prevail, Courts of justice will be of very little use. A more glorious doctrine for thieves it would be difficult to discover, but a more injurious doctrine for honest men cannot well be imagined."

(*n*) *R. v. Phoetheon*, 9 C. & P. 552. And see *R. v. Wright*, 9 C. & P. 554, note, where on a servant, who was indicted for stealing his master's plate, setting up as a defence his intention to replace it, Hullock, B. (Holroyd, J., being present), left it to the jury to say whether the prisoner took the plate with intent to steal it, or whether he merely took it to raise money on it for a time and then return it, for that in the latter case it was no larceny. To which the learned reporters add the following note: "This decision has given rise to much discussion in various cases; and much difficulty has been found in applying the doctrine it lays down to the facts of particular transactions. In some instances, where it has appeared clearly that the party only intended to raise money on the property for a temporary purpose, and, at the time of pledging the article, had a reasonable and fair expectation of being able shortly by the receipt of money to take it out of pawn, juries, under the advice of the judge, have acted upon the doctrine and acquitted. But, in other instances, where they could not discover any reasonable prospect which the party had at the time of pledging of being able soon to redeem the article, they have considered the doctrine as inapplicable and have convicted." See also *R. v. Holloway*, 2 C. & K. 944, *post*, p. 426, note (2); *R. v. Treblecock*, 4 Dears. & Bell, C. C. 453.

The jury found the prisoner guilty, and he was transported for fourteen years.

By 24 & 25 Vict. c. 96, s. 61, "whosoever shall steal any chattel, money or valuable security in any dwelling-house, and shall by any menace or threat put any one being therein in bodily fear, shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the Court to" [same punishment as under sect. 56, *ante*, p. 422].

Larceny Act, 1861, s. 61.

Stealing in a dwelling-house with menaces.

STEALING GOODS IN PROCESS OF MANUFACTURE.

By 24 & 25 Vict. c. 96, s. 62, "whosoever shall steal to the value of ten shillings any woollen, linen, hempen or cotton yarn or any goods or article of silk, woollen, linen, cotton, alpaca or mohair, or of any one or more of those materials mixed with each other or mixed with any other material whilst laid, placed or exposed during any stage, process or progress of manufacture in any building, field or other place, shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the Court to" [same punishment as under sect. 56, *ante*, p. 422].

Sect. 62.

DESTROYING GOODS IN PROCESS OF MANUFACTURE.

By 24 & 25 Vict. c. 97, s. 14, "whosoever shall unlawfully and maliciously (*r*) cut, break or destroy, or damage with the intent to destroy or to render useless any goods or article of silk, woollen, linen, cotton, hair, mohair or alpaca, or of any one or more of those materials mixed with each other or mixed with any other material, or any frame-work-knitted piece, stocking, hose or lace being in the loom or frame or on any machine or engine or on the rack or tenters or in any stage, process or progress of manufacture, or shall unlawfully and maliciously cut, break or destroy or damage with the intent to destroy or to render useless (*w*) any warp or shute of silk, woollen, linen, cotton, hair, mohair or alpaca, or of any one or more of those materials mixed with each other or mixed with any other material, or shall unlawfully and maliciously cut, break or destroy or damage with intent to destroy or render useless any loom, frame, machine, engine, rack, tackle, tool or implement, whether fixed or moveable, prepared for or employed in carding, spinning, throwing, weaving, fulling, shearing or otherwise manufacturing or preparing any such goods or articles, or shall by force enter any house, shop, building or place with intent to commit any of the offences in this section mentioned, shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for life or for any term not less than [three years (*x*)], or to be imprisoned for any term not exceeding two years, with or without hard labour], and, if a male under the age of sixteen years, with or without whipping."

Malicious Damage Act, 1861.

(*r*) An indictment under this section should say "feloniously," or it would be bad. *R. v. Gray*, 33 L. J., M. C. 78.

(*w*) See *R. v. Fisher*, L. R., 1 C. C. R. 7.

(*x*) Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

Malicious
Damages Act,
1861.

The Malicious Damage Act, 1861 (24 & 25 Viet. c. 97), also contains in sect. 52 a general provision that "who-soever shall wilfully or maliciously commit any damage, injury or spoil to or upon any real or personal property whatsoever, either of a public or private nature, for which no punishment is hereinbefore provided, shall on conviction thereof before a justice of the peace" be liable to imprisonment, or to be fined and to pay compensation not exceeding 5*l.* to the party aggrieved. A milk carrier has been held (*y*) guilty of an offence under this section for damaging his employer's milk by adding water to it, with no intention of injuring his employer, but in order to make a profit for himself by increasing the bulk of the milk.

LARCENY AND EMBEZZLEMENT BY CLERKS AND SERVANTS.

Distinction
between
larceny and
embezzle-
ment.

The legal distinction between these two offences is that the former consists in the felonious taking of property, &c., *out of the possession* of the master (*z*), whether that possession be actual or constructive, whilst the latter consists in the receiving property, &c., for or on account of the master, and fraudulently appropriating it, *before it reaches his possession*, either actual or constructive. Morally and substantially, however, the offence is the same in both cases, and accordingly the punishment for both offences is now the same. But although, since Lord Campbell's Act for the Improvement of the Administration of Criminal

(*y*) *Roper v. Knott*, 1898 1 Q. B. 868. By sect. 58 of the Act it is not essential to the committing of an offence under the Act that it was committed from malice conceived against the owner of the property.

(*z*) In *R. v. Holloway*, 2 Carr. & K. 916, Lord Wensleydale said, "The definitions of larceny are none of them complete. East's is the most so, but that wants some explanation. His definition is 'the wrongful or fraudulent taking or carrying away by any person of the mere personal goods of another from any place with a felonious intent to convert them to his (the taker's) own use and make them his own property, without the consent of the owner.' This is defective for not stating what the fraudulent taking is, and what the felonious intent is; this may be explained, that the 'taking' is without any colour of right, and the 'intent' an intent to deprive the owner permanently of the property. Cases also show that a taking of goods with an intent to return them is not larceny." See also *supra*, p. 424, note (*u*).

Justice (*a*), a person indicted for one of those offences may be found guilty of the other, yet there is still a great practical difference between the two; for even now, should a person be indicted for and *convicted of* either of those offences, upon evidence which proves the other, the conviction may be quashed and the prisoner escape (*b*).

Most of the technicalities, therefore, which formerly surrounded these offences, and which it was hoped would be done away with by Lord Campbell's Act, still survive. It therefore becomes absolutely necessary to advert to the numerous cases which have been and still continue to be decided upon the distinction above pointed out.

At common law a servant might be guilty of felony in feloniously taking away the goods of his master, though they were goods under his charge, as a shepherd, butler, &c., and may at this day, for any such offence, be indicted as for a felony at common law; but at common law, if a man had *delivered* goods to his servant to keep or carry for him, and he carried them away *animo furandi*, it was doubtful whether such servant was guilty of felony, or merely of a breach of trust. These doubts gave rise to, and are recited in the stat. 21 Hen. 8, c. 7, whereby such an offence was made felony (*c*). Subsequent decisions, however, established that where a party had only the bare charge or custody of the goods or money of another, the legal possession remained in the owner, and the party might be guilty of trespass and larceny in fraudulently converting them to his own use (*d*). This

Larceny by
servant at
common law.

Stat. 21 Hen.
8, c. 7.

Where servant
had bare
custody.

(*a*) 14 & 15 Vict. c. 100, s. 13. That section was repealed by 24 & 25 Vict. c. 95, but 24 & 25 Vict. c. 96, s. 72, *post*, p. 474, is a similar enactment.

(*b*) *R. v. Gorbitt*, 26 L. J., M. C. 47.

(*c*) It is said by Gould, J., in *R. v. Wilkins*, 1 Leach, C. C. 520, that this statute did not mean to weaken, but assist, the common law. But it is remarkable that the stat. 5 Eliz. c. 10 (which revived and made perpetual the stat. 21 Hen. 8), recites that it had been repealed by the general words of stat. 1 Mary, sess. 1, c. 1. That statute of Mary, however, only enacted that all offences made felony during the reign of Hen. 8, *which were not felony before*, should be repealed. Hence it would seem that, at the time 5 Eliz. c. 10 was passed, it was considered that servants embezzling goods entrusted to them were not guilty of felony at common law, but only by the statute of Hen. 8. The point, however, is more curious than important at the present day. The stat. 5 Eliz. was repealed 7 & 8 Geo. 4, c. 27.

(*d*) *Bac. Abr.* Master and Servant, M. 2; *Hale's Hist. P. C.* 505; 2 East,

rule holds universally in the case of servants whose possession of their master's goods *by delivery of their master* is held to be the possession of the master himself, where the master only intended to part with the *custody* of the goods, and if the servant converts such goods to his own use it is larceny, whether he had a felonious intent at the time he received them, or conceived such an intention afterwards (*e*). Thus, in the case of a butler, or other servant, to whose care a master entrusts his plate or other goods, it has uniformly been held that such servants are guilty of felony by embezzling such plate or goods, or taking them fraudulently away; and this doctrine is not confined to menial servants only, for it appears, both by Hale and Hawkins, that if a shepherd who has the care of sheep, and who, from the nature of his employment, must be constantly in the pastures, takes away any part of the flock with intent to steal it, he is guilty of felony, although, in both cases, the plate is actually delivered to the butler (*f*), and the sheep to the shepherd; for the possession still remains in the master (*g*). Lord Coke says (*h*) “these things be *in onere, et non in possessione, promi, coci, pastoris, &c.*” And this law prevails in all cases where servants have not the absolute dominion over the property, but are only

P. C. c. 16, s. 14, p. 564; 2 Russ. on Crimes, 191, 4th edition, where several cases will be found in support of the rule stated in the text.

(*e*) To incite a servant to steal his master's goods is a *misdemeanour*, indictable at the sessions, although it be not charged in the indictment that the servant stole the goods, nor that any other act was done, except the soliciting and inciting. *R. v. Huggins*, 2 East, 5; *R. v. Gregory*, L. R., 1 C. C. R. 77. If the felony has been committed by the servant the “counselling, procuring or commanding” it to be committed is a felony by 24 & 25 Vict. c. 94, s. 2. See *ibid.* *Seem* the means used need not be set out in the indictment, see *R. v. Hogue*, 33 L. J., M. C. 81.

(*f*) In *R. v. Ashley*, 1 Carr. & K. 198, it was held that plate belonging to a club could not be described as the property of the house steward in an indictment against a member of the club for stealing it. But see *R. v. Burgess*, 32 L. J., M. C. 185, where it was held that a member of a co-operative society might be convicted of larceny from B., a servant of the society, for stealing from B.'s till in the shop of the society, money received for goods at the society sold by B. as their servant, for which he was personally accountable.

(*g*) See *per* Gould, J., in 1 Leach, C. C. 523.

(*h*) 3 Inst. 198.

entrusted with the care or custody of it for a particular purpose (i).

Thus, a foreman and book-keeper to a mercer, not residing in his master's house, but going there every day to transact business, who received from his master certain bills to send to a correspondent by post, in the usual course of business, but, instead of sending them all, kept back one, for which he obtained cash, and absconded with the money, was held rightly convicted of larceny; as the possession of the bill still remained in his master (k). So a carter going away with his master's cart was holden to have been guilty of felony (l). So where a tradesman's servant and porter was sent with a package of goods from his master's house with directions to deliver them to a customer, but by the way opened the package, sold the goods, and pocketed part of the price, all the judges held this to be felony (m).

Paradice's case.

Robinson's case.

Bass's case.

And so where a corn-factor, having purchased a cargo of oats, sent his servant with a barge to receive part of the oats in loose bulk, and the servant ordered some of the oats to be put into sacks which he afterwards embezzled, the judges held it to be larceny (n).

Spears' case.

So a servant going off with money given to him by his master to carry to another, or get changed (o),

Lavender's case.

(i) Upon this principle it was held in *R. v. Wilkins*, 1 Leach, C. C. 520, that to obtain goods by false pretences from the servant of the owner to whom they were delivered for the purpose of being carried to a customer who had purchased them, was a taking from the possession of the master: and a person so taking them with a preconceived design to steal them was guilty of felony. See *R. v. Johnson*, 21 L. J., M. C. 32.

(k) *R. v. Paradice*, 2 East, P. C. 565, cited by Gould, J., in 1 Leach, 523; and see *R. v. Metcalfe*, Moo. C. C. 433.

(l) *R. v. Robinson*, 2 East, P. C. 565. A servant going off with his master's box and his master's wife was held guilty of larceny of the box, *R. v. Muttons*, 34 L. J., M. C. 54. Evidence of a confession of guilt to his master was held admissible in *R. v. Jarvis*, L. R., 1 C. C. R. 96.

(m) *R. v. Bass*, 2 East, P. C. 566.

(n) *R. v. Spears*, 2 East, P. C. 568. In *R. v. Walsh*, 4 Taunt. 276, Heath, J., said, "That case went upon the ground that the corn was in the prosecutor's barges, which was the same thing as if it had been in his granary." See also *R. v. Reed*, Dears. C. C. 257; and see *R. v. Abraham*, 2 East, P. C. 569; *Aldridge v. Johnson*, 7 E. & B. 885; *R. v. Bunkell*, 33 L. J., M. C. 75.

(o) *R. v. Goodc*, Carr. & M. 582; *R. v. Smith*, 1 C. & K. 423; *R. v. Cooke*, L. R., 1 C. C. R. 295. Where one workman, who was sent to the

and applying it to his own use, was holden guilty of larceny (*p*).

Chipchase's case.

And so it was held to be larceny for the confidential clerk of a merchant to take a bill of exchange unindorsed from its proper repository, discount it, and convert the proceeds to his own use: although he had the general management of his master's cash concerns, and authority to get bills discounted (*q*).

R. v. Wright.

Banker's clerk taking money from iron safe.

And so, in the following case the prisoner was held guilty of larceny (*r*): The prisoner W. was employed by a banking company to conduct a branch bank, and the whole of the duties thereof were discharged by him alone. He was paid 150*l.* a year, for which he was bound to provide a place for carrying on the business, and the place so provided was in his own house, where he carried on business as a wine merchant. The office was fitted up at the expense of the bank, and in it there was an iron safe provided by the bank, into which it was W.'s duty to put any money received during the day, which had not been required for the purposes of the bank. There were duplicate keys of this safe, one in W.'s custody and one under the control of the manager of the bank. W. furnished weekly accounts of moneys received and paid by him, showing the balance in his hands, and of what notes, &c., the balance consisted. In September, 1855, W.'s accounts were audited, and the cash found correct, but although for two years afterwards he furnished the usual weekly accounts, no examination was made during that time of the balances in his hands. In September, 1857, the manager having appointed a time for examining the cash in W.'s hands, he said he was about 3,000*l.* short in his cash, and handed over to the manager 755*l.* 10*s.*, which he said was all the cash

pay-table to get money for four, stole it, it was held to be the money of the four workmen, and not of the master. *R. v. Barnes*, L. R., 1 C. C. R. 45.

(*p*) *Lavender's case*, Huntingdon Lent Ass. 1793, twice considered by the judges, East. T. 1793, and Trin. T. 1793.

(*q*) *R. v. Chipchase*, 2 East, P. C. 567.

(*r*) *R. v. Wright*, 1 Deurs. & Bell, C. C. 431.

he had left, and which he took from a drawer in the counter, not from the safe. Afterwards, when before the magistrates on a charge of embezzling the 3,000*l.*, he said, "I admit that I have taken the amount of money which appears in my weekly return, dated September 12, 1857, and entered as a deficiency of 3,021*l.* 9*s.* 9*d.*" The jury found W. guilty of larceny as a clerk in having stolen *some money* received from customers, which, before such stealing, had been placed in the safe and made the subject of a weekly account. And it was held by the Court for the Consideration of Crown Cases Reserved, that there was evidence that W., as his duty required, placed in the safe money which had been previously received from customers, that he thereby determined his own exclusive possession of the money, and that by afterwards taking some of such money out of the safe, *animo furandi*, he was guilty of larceny. It was also held, that the finding, that W. stole "*some money*," was sufficiently certain, as it was not necessary that they should find that any specific amount was stolen on any particular day.

And where some barilla, which the prosecutors had bought, was weighed out in the presence of their clerk, and delivered to their carter's servant to cart, and he allowed other persons to take away the cart and dispose of the barilla for his benefit jointly with that of the other persons, it was held that *he*, as well as the other persons, was guilty of larceny at common law (*s*).

Again, where (*t*) a man sent his servant with his

R. v. Wright.

R. v. Harding.

R. v. Reed.

(*s*) *R. v. Harding*, Russ. & Ry. 125. Where a master finding some brass castings in the pocket of a thief sent for a policeman, and they were taken out, but afterwards given back to the thief, who by *the master's direction* took them to the house of the person to whom he had intended to sell them, and sold them to him and gave his master the price, it was held that that person could not be convicted of receiving stolen goods: *R. v. Dolan*, 24 L. J., M. C. 59, approved and followed in *R. v. Schmidt*, L. R., 1 C. C. R. 15; and *R. v. Villensky*, (1892) 2 Q. B. 597.

(*t*) *R. v. Reed*, 23 L. J., M. C. 25. This case was twice argued, and long considered, but ultimately decided upon the authority of *Spears' case*, *supra*, p. 429; but Lord Wensleydale said that if it were *res nova* he should have pronounced an opinion that the prisoner's offence was not larceny. See, also, *R. v. Norval*, 1 Cox, Cr. C. 95.

R. v. Reed.

master's) cart to the railway station for some coals, which were put into the cart, and on the way home the servant, without authority from his master, disposed of some of the coals to a third person, he was held to be guilty of larceny, as the coals having been placed in the master's cart, were not in the exclusive possession of the servant, but constructively in the possession of his master.

Persons employed to drive cattle who sold and pocketed the money.

And so a person employed to drive cattle to a particular place, who had no authority to sell the cattle, but did so, and converted the money to his own use, having had a felonious intent at the time he received charge of the cattle, was held guilty of larceny of the cattle.

R. v. Stock.

Thus, where (*u*) the prosecutor saw the prisoner at Bristol fair, and hired him to drive fifty sheep for him from Bristol to Bradford fair. This was on a Thursday, and the prisoner, with the sheep, was to meet the prosecutor on the following Sunday evening at the turnpike-gate, nearest to Bradford. The prisoner had no authority to sell the sheep, but was only to drive them to Bradford, for which he was to receive two shillings and sixpence per day. The prisoner never was a servant of the prosecutor, but had been occasionally employed to drive sheep, and he never had authority to sell. The prisoner never went to Bradford, but sold the sheep, telling the purchaser he had authority to do so. The jury found that the prisoner *at the time* he received the sheep *intended* to convert them to his own use, and not to go to Bradford. And he was convicted of felony, which conviction was afterwards held right by the judges.

Other cases of larceny.
Servant receiving goods from master on his account.

So a servant who receives goods from his master, on the master's account, and wrongfully appropriates them, is not guilty of embezzlement, but of larceny (*v*).

u *R. v. Stock*, 1 Moo. C. C. 87. But see as to drovers generally, *R. v. Hey*, *post*, p. 444.

v *R. v. Hawkins*, 1 Den. C. C. 581. It is said by the Court in *R. v. Whittingham*, 2 Leach, C. C. 913, that "if a servant received money, either from the master, or from a third person on his master's account," he was guilty of *embezzlement*; but in *R. v. Hawkins*, Lord Truro said, "The

And a contractor's servant who used false weights with intent to steal the difference between the true and false weights, was convicted of attempting to steal (*x*).

In the following case (*y*), however, it was held, that under the circumstances, a clerk ought to have been indicted for false pretences.

At a savings bank the course of business was this:—*R. v. Essex.*
The depositor gave a notice to the clerk of the amount required, and if present on next night of business received a cheque from the manager; if absent he allowed the clerk to receive and cash such cheque, and keep the cash till called for, and both depositor and clerk signed the book. The clerk, by falsely pretending to the manager that G. had given notice for 50*l.*, and was not in attendance, obtained from the manager a cheque for 50*l.*, and afterwards the cash, which he pocketed; it was held, that he ought to have been indicted for false pretences, and not for larceny, as he acted as agent for the depositor.

If a servant who has authority to sell, and enter sale in a book, do sell, and omit to make an entry of the sale in the book, and pocket the price, he cannot be convicted of larceny of the *goods*, but of embezzlement of the money (*z*). But if a servant who has *no* authority to sell part with his master's goods, under colour of a pretended sale, to a purchaser, both servant and purchaser may be indicted for larceny (*a*).
Servant selling goods with authority and pocketing price.
R. v. Betts.
Selling without authority.
R. v. Hornby.

And if a servant take his master's property, and hand it over to another as a gift, it is as much a felony as if he sell it, or take it to a pawnbroker and pledge it.

dictum in *R. v. Whittingham* must be associated with some facts which do not appear in the report of the case." See also *R. v. Metcalfe*, 1 Moo. C. C. 433, where the prisoner was held properly convicted of larceny for appropriating a cheque which he received from his master to pay a creditor. *R. v. Johnson*, 21 L. J., M. C. 32; *R. v. Poyser*, 5 Cox, C. C. 241.

x) *R. v. Cheeseman*, 31 L. J., M. C. 89.

y) *R. v. Essex*, 27 L. J., M. C. 20.

z) *R. v. Betts*, 28 L. J., M. C. 69; *R. v. Brackett*, 4 Cox, C. C. 274.

a) *R. v. Hornby*, 1 C. & K. 305.

Giving away
master's
property.

R. v. White.

In a case, therefore, where (*b*) a cook, out of compassion, as she alleged, gave away a bundle containing bread, candles, soap and butter, done up in one of her master's towels (altogether not worth eighteenpence), she was convicted of larceny, and she, as well as the receiver were sentenced to three months' imprisonment (having, under the circumstances, been recommended to mercy by the jury who tried them).

Appropriating things
found in
master's
house.

R. v. Kerr.

Where a nursery-maid, who was indicted for stealing bank-notes, the property of her master, in his dwelling-house, set up as her defence, that she found them in the passage, and, not knowing to whom they belonged, kept them to see if they were advertised: it was held, that she ought to have inquired of her master whether they were his or not; and that not having done so, but having taken them away from the house, she was guilty of stealing them (*c*).

Clandestinely taking
master's corn
though for
his horses.

And it was formerly held (*d*) that a servant who clandestinely took his master's corn was guilty of felony,

b *R. v. White*, 9 C. & P. 344. Where certain friends of the servants were entertained by them at night without their master's leave, it was held that the justices might have convicted the friends under the Vagrant Act, 5 Geo. 4, c. 83, s. 4, as being in the house for an unlawful purpose. *Kirklin v. Jenkins*, 32 L. J., M. C. 140.

c *R. v. Kerr*, 8 C. & P. 176. See *R. v. Thornborn*, 2 C. & K. 831, where it was held that if a person finds goods that have been lost, or are reasonably supposed by him to have been lost, and appropriates them with intent to take the entire dominion over them, but reasonably believing that the owner can be found, it is larceny. But if he have no intention of appropriating it at the time of finding, the subsequent conception of such an intention would not convert the honest taking into a dishonest one, and so make him a felon by relation. *R. v. Preston*, 21 L. J., M. C. 41; *R. v. Dixon*, 1 Dears. C. C. 580; *R. v. Christopher*, 28 L. J., M. C. 35; *R. v. Moore*, 30 L. J., M. C. 77; *R. v. Glyde*, L. R., 1 C. C. R. 139.

d *R. v. Mayfit*, L. & R. 307; *R. v. Handley*, Carr. & M. 547; *R. v. Proett*, 2 Carr. & K. 114; 1 Den. C. C. 193. In the last report of the last case, it is said that although all the judges agreed that they were bound by previous decisions to hold it to be larceny, several of them expressed a doubt, if they should have so decided, if the matter were *res integra*. The following passage in Hamn's "Life of Dr. Chalmers," vol. i, p. 112, may assist the deliberations of those who still doubt on this matter. "Examining once at a farmhouse, one of the ploughmen was called up. The question in order was 'What is the Eighth Commandment?' But what is stealing? 'Taking what belongs to another and using it as if it were your own.' Would it be stealing, then, in you, to take your master's oats or hay contrary to his orders, and give it to his horses? This was one of the many ways in which he (Dr. C.) sought to instil into the minds of his people a high sense of justice and truth, even in the minutest transactions of life."

although he took it to give to his master's horses, and without any intention of applying it to his own private benefit. But this offence is not now a felony, but is punishable on summary conviction before two justices (*c*).

The prisoner was employed as a puddler by an iron company. The puddlers employed were in the habit of receiving a certain quantity of pig-iron which they put into the furnaces, and they were paid for their work according to the quantity drawn out of the furnace and formed into puddle-bars. The prisoner put an iron-axle (not pig-iron) belonging to his masters into the furnace, by the melting of which, in addition to the pig-iron, his profit would be increased about 1*l*. Tindal, C. J., at first doubted whether the act of the prisoner, though unquestionably fraudulent and wrong, came within the definition of larceny, as the iron was to come back to the owners in the same substance, though in another form; but, upon the counsel for the prosecution citing *R. v. Morfit*, and such cases, left it to the jury to say whether the prisoner put the axle into the furnace with a felonious intent to convert it to a purpose for his own profit, for if he did so this was larceny. The jury found the prisoner guilty (*f*).

Puddler paid by weight mixing master's metal with pig-iron.

R. v. Richards.

And where a carter, who was allowed by his master a small quantity of hay for the use of the horses on their journey to and from London, took from his master's stables two trusses of hay above the quantity allowed, and put them on the tail of his master's waggon, and afterwards the ostler at a public-house on the road side received them from the carter; it was held that the carter was guilty of larceny, that the larceny was complete the moment the hay got into the cart *animo furandi*, and, therefore, that the ostler was properly indicted for receiving the hay, knowing it to have been

Taking more hay than master allowed.

R. v. Gruncell.

(*c*) The Misappropriation by Servants Act, 1863 (26 & 27 Vict. c. 103), *post*, Appendix.

(*f*) *R. v. Richards*, 1 C. & K. 532.

stolen; but that if it had been hay allowed for the horses which was stolen it would have been otherwise (*g*).

Offering
master his
own goods for
sale.

R. v. Hall.

Miner fraudu-
lently adding
to heap of
ore.

R. v. Webb.

Tanner,
skins.

*R. v. Hollow-
way.*

Glove
finisher,
gloves.

R. v. Paul.

In *R. v. Hall* (*h*), where a servant took his master's goods to his master and endeavoured to induce him to purchase them, pretending that the goods were sent by a person with whom the master dealt, it was held to be larceny. But in *R. v. Webb* (*i*), it was held *not* to be larceny for miners employed to bring ore to the surface, and paid by the owners according to the quantity produced, to remove from the heaps of other miners, ore produced by them and add it to their own, in order to increase their wages; the ore still remaining in the possession of the owners. And upon the authority of that case it was held in *R. v. Holloway* (*k*) not to be larceny for a workman in the employ of a tanner to take skins from his master's warehouse to the foreman at another part of the premises, pretending that he had done work on them for which he was to be paid, and intending to return the skins to his master after he had been paid for his pretended work, but an attempt to commit the misdemeanor of obtaining money by false pretences. And the authority of *R. v. Holloway* was acted upon in the following case (*l*):—The prisoners were indicted for stealing. The master was a glove-maker, and the prisoners were in his employ as glove-finishers. When they had done any work the practice was to take the

(*g*) *R. v. Grice*, 9 C. & P. 365.

(*h*) *R. v. Hall*, 2 Car. & K. 917; *R. v. Manning*, 22 L. J., M. C. 21. See *R. v. Beecham*, 5 Cox, Cr. C. 181, where a man was convicted of larceny of a railway ticket although given up.

(*i*) *Moo*, C. C. 431. Pattenon, J., dissented. This offence would be larceny now. By 24 & 25 Vict. c. 96, s. 39, "Whosoever being employed in or about any mine shall take, remove or conceal any ore of any metal, or any lapis calaminaris, manganese, mundick, or other mineral found or being in such mine, with intent to defraud any proprietor of, or any adventurer in such mine, or any workman or miner employed therein, shall be guilty of felony: and, being convicted thereof, shall be liable at the discretion of the Court to be imprisoned for any term not exceeding two years with or without hard labour, and with or without solitary confinement." See *R. v. Treanney*, 2 M. & Rob. 476. This section applies to all England and Ireland; not Scotland: see sect. 122.

(*k*) 2 Car. & K. 941.

(*l*) *R. v. Paul*, 27 L. J., M. C. 53.

finished gloves to an upper room and lay them on a table, in order that the workmen might be paid according to the number finished. The prisoners broke open a store-room on their master's premises, took out a quantity of finished gloves and laid them on the table in the upper room, with intent fraudulently to obtain payment for them as for so many gloves finished by them. The gloves were never off the master's premises. It was held that they could not be convicted of larceny as they claimed no property or lien on the gloves, and had not sold, or attempted to sell them, as in *R. v. Hall* (m).

Where a foreman made out and rendered to his master, A., an account of 14*l.* as due from A. to his workmen, and A. gave him a cheque for the amount, all of which was due except 7*s.*, which the foreman kept when he got the cheque cashed, and paid the workmen the rest; it was held that the foreman might be convicted upon an indictment which charged that by this false pretence he obtained the cheque from A. with intent to defraud him of *the same* (n).

Foreman,
workmen's
wages—false
pretences.

R. v.
Leonard.

And where a clerk made out a false account of customs dues and obtained the amount from his master's cashier, pocketing the difference between the true and the false amount, he was held guilty of obtaining money under false pretences (o). And it has also been held that he might be indicted for stealing the difference, as whilst it remained in his custody it was in the possession of his master (p).

Clerk, false
account of
customs dues.

R. v. Thompson.

But in the following case (q), of a somewhat similar nature, the indictment was held bad, and the prisoner escaped punishment:—A. worked for the prosecutors as a journeyman, and the quantities of work done by him for them during each week were entered in a book kept for that purpose. The prices for the work so entered

Altering
sums total so
as to increase
amount due to
journeyman
—not false
pretences.

R. v. Oates.

(m) *Ante*, p. 436.

(n) *R. v. Leonard*, 2 C. & K. 514.

(o) *R. v. Thompson*, 32 L. J., M. C. 57. See *R. v. Barnes*, 2 Den. C. C. 59.

(p) *R. v. Cooke*, L. R., 1 C. C. R. 295.

(q) *R. v. Oates*, 1 Dears. C. C. 459.

R. v. Oates.

were placed in a column opposite to each quantity of work, and added up on behalf of the prosecutors at the end of each week. The weekly totals of these prices were entered by them in this book, and the amount of the totals paid by them to O. as the ascertained sum due to him for work done, on the production by him of this book. After these weekly totals had been entered as above, O. altered them into larger amounts, and then procured payment of the larger amounts on producing the books, and afterwards erased the larger amounts and restored the figures of the original totals. He was indicted for obtaining money by false pretences. The indictment in some counts averred that he falsely pretended that, he having executed certain work, there was a certain sum of money due and owing to him for and on account of the work, being parcel of a larger sum claimed by him, whereas there was not then due and owing to him such money, being parcel of a larger sum. And in other counts it was averred that he falsely pretended that there was due and owing to him the whole amount of a sum of money for and on account of certain work executed by him, whereas there was not then due and owing to him the whole amount of such sum of money, but only a smaller sum. It was held that the indictment was bad, as a false pretence of an existing fact was not sufficiently alleged, and the averments would be proved by evidence of a mere wrongful overcharge.

Overcharge
for work done.

R. v. Mills

And again, where (*v*) a workman stated that he had done more work than he really had, and requested payment for the work he stated he had done, and his master *knowing* that it was a false overcharge, and wishing to entrap him, paid him the amount demanded, it was held that the workman could not be indicted for obtaining money under false pretences, as it was not the falsehood which induced his master to part with the money.

If a weaver or silk-throwster deliver yarn or silk to be wrought by his journeymen *in* his house, and they carry it away and convert it to their own use, this is larceny at common law, but if to be wrought *out* of the house it is not, for the journeymen in that case are considered bailees and not servants (*s*). They may, however, now be convicted of larceny under sect. 3 (*t*) of the Larceny Act, 1861 (24 & 25 Vict. c. 96).

Silk-throwster's Case.

In a case (*u*) in which the prisoner, who was clerk to a dealer in skins, received at different times several sums of money from his master for the purpose of purchasing skins, and credited his master with the amounts in his day cash-book, but obtained the skins on credit, and debited his master in his day cash-book with several sums of money as having been paid for those skins, applying the cash to his own use; it was held that he could not be convicted of larceny of the money.

Clerk furnished with cash, obtaining goods on credit.

R. v. Goodenough.

And a similar decision was made in the following case (*v*):—

Falsifying accounts and receiving balance.

The prisoner was bailiff to the prosecutor, and it was part of his duty to receive and make payments on behalf of his master, and make entries of such receipts and payments in a book which was examined by the prosecutor from time to time. On one occasion the prisoner showed a balance in his favour of 2*l.*, by taking credit for payments falsely entered in his book as having been made by him, when in fact they had not been made by him, and

R. v. Green.

(*s*) East, P. C. 682, 683: *R. v. Seward*, 5 Cox, C. C. 295.

(*t*) By that section it is enacted, that "whosoever being a bailee of any chattel, money or valuable security, shall fraudulently take or convert the same to his own use or the use of any person other than the owner thereof, although he shall not break bulk or otherwise determine the bailment, shall be guilty of larceny, and may be convicted thereof upon an indictment for larceny; but this section shall not extend to any offence punishable on summary conviction." This proviso was introduced to prevent the clause applying to the cases of persons employed in the silk, woollen, and other manufactures, who dispose of goods entrusted to them, and are liable to be summarily convicted under sundry statutes. Under this section the person must be bound to return the identical goods or coin deposited. *R. v. Hassall*, 30 L. J., M. C. 175.

(*u*) *R. v. Goodenough*, Dears. C. C. 210. The prisoner was indicted for embezzlement and found guilty of larceny, but the conviction was quashed.

(*v*) *R. v. Green*, Dears. C. C. 323.

received from his master the sum of 2*l.* as a balance due to him; it was held that the offence of which the prisoner was guilty was not larceny, whatever else it might have been.

Where master parts with possession, as well as custody, felonious intent at the time of receipt necessary to constitute larceny.

Where a master parts not only with the *custody*, but also with the *possession*, of goods to a servant, and the servant converts them to his own use, it is not *larceny* unless he had a felonious intent *at the time (w)* he received them. And therefore in the case of drovers (*x*) and other servants entrusted with goods with authority to sell and receive the purchase-money, if such servants sell and embezzle the money, the offence will not be larceny unless the servant had a felonious intent when he took possession of the goods (*y*).

R. v. Harvey.

Therefore, where (*z*) a person sent some pigs by the prisoner to a lady to be looked at, but he sold the pigs, and did not take them to her, Alderson, B., left it to the jury to say whether the prisoner had a felonious intent from the commencement of the transaction; and whether he received the pigs as bailee to deal with them, or only as a servant having the custody of them, and whose duty it was to bring them back. "If," said his lordship, "the prosecutor meant that the prisoner should leave the pigs with the lady, and either bring back the money, or make a bargain for the sale of them, then he will be in the situation of a bailee. The question is, whether they were delivered to the prisoner simply that he should show them to the lady, and bring them back bodily; if they were, then, if the felonious intent came upon him at that time, it would come upon him at the time when he had only the custody, and not the possession, and in that case he would be guilty of stealing them."

Drovers by trade are not servants.

But it has been held (*a*) that a *drover by trade*, who was

(w) *R. v. Flowers*, 16 Q. B. D. 643.

(x) *R. v. Goodbody*, 8 C. & P. 665.

(y) *R. v. Evans*, Carr. & M. 632; and see *R. v. Glass*, 2 Carr. & K. 395.

(z) *R. v. Harvey*, 9 C. & P. 353; and see *R. v. Evans*, Carr. & M. 632; but see *R. v. Jones*, Carr. & M. 611.

(a) *R. v. Hey*, 2 Carr. & K. 983; *R. v. Gibbs*, 1 Dears. C. C. 445.

employed to drive pigs to a particular place, was paid by the day, and by the custom of the trade had a right to drive other persons' cattle also, but who sold the pigs and absconded with the money, could not be convicted of larceny as a servant, as he was a mere bailee and not a servant, and had no original intention of stealing the pigs. In that case the prisoner was convicted, but the question having been reserved for the consideration of the judges, the conviction was held improper. In giving judgment in that case, Lord Wensleydale said,—

R. v. Hey.

“The question is whether, on the facts stated in this case, the prisoner received the custody of the pigs as a servant of the prosecutor, or as a bailee; in the latter case he could not be guilty of larceny, unless he had intended to appropriate them to his own use at the time of the receipt, which was not the case; in the former he would be guilty of larceny, according to the finding of the jury; as to which they were properly directed by the learned assistant barrister. There are several reported cases bearing upon the question, whether a person is a mere servant or a bailee. There are none precisely like the present, though the case of *Rex v. Bernard M'Namee* (*b*) nearly approaches it. In this case on the one hand, the circumstance that the prisoner was paid the expenses of the cattle, and also that the customary mode of his remuneration was by the day, tend to show that he was a mere servant; on the other, the fact of his being a drover by trade, and also of his having the liberty to drive the cattle of any other person by the general usage with respect to drovers, raises an inference that he was not a servant. The learned assistant barrister felt himself bound by the decision of the judges in the case of *Reg. v. Hughes* (*c*), but that case was under the statute 7 & 8 Geo. 4, c. 29, s. 47, which makes embezzlement by a servant, or person employed in the capacity of a servant, to receive money, felony; and the learned Recorder of London referred the question to the judges, whether the prisoner fell under either description, though if the indictment had been referred to, it was necessary to prove that he was a servant. The judges decided that the prisoner was properly convicted, and consequently that he was a servant or person employed in that capacity, and authorized as such to receive money, so that his receipts would be a discharge to the debtor. This is almost exactly the same question; it is whether the prisoner had the custody of the cattle as a servant to the prosecutor at

(*b*) 1 Moo. C. C. 368. In that case a general drover, who had been employed by the prosecutor off and on for nearly five years, but not as a regular servant, and was employed to take some sheep to G. fair, being paid 3s. a day, sold the sheep entrusted to him without having authority to do so, and pocketed the money, was held properly convicted of felony, as he had merely the custody of the sheep and his possession was his master's; and he had no intention of stealing the sheep at the time he received them. And see *R. v. Jackson*, 2 Moo. C. C. 32.

(*c*) 1 Moo. C. C. 370.

R. v. Hey.

the time of the receipt of them, and we think he could not be so considered, unless in driving the cattle to market he was his servant, and the prosecutor responsible for any negligent act of his in so driving them. This subject has undergone much discussion of late, and has been placed on its proper footing by the case of *Quarman v. Burnett* (*d*), and other cases; one of which is that of a general drover, who was held in the case of *Milligan v. Wedge* (*e*) not to be a servant, so as to make the owner of the cattle responsible for his negligence. After the full consideration which this subject has undergone, we doubt whether the case of *Ree v. Bernard McNamee*, above referred to, would now be decided in the same way. Upon the whole we think it was not proved in this case that the prisoner was a mere servant, and the conviction was improper."

Prisoner indicted for larceny as a servant may be convicted of simple larceny.

Where a prisoner is indicted for larceny *as a servant*, he may be convicted of simple larceny, as proof of the allegation in the indictment that he was a servant, is only necessary for the purpose of convicting him of the compound offence. If, therefore, a prisoner is indicted as servant of A., and he turn out to be the servant of B., he should be convicted of simple larceny (*f*).

The prosecutor gave his mare to the prisoner to look after for a few days, and then to sell it for him. The prisoner sold the mare, but declined to give up the money, and eventually absconded with it. He was indicted at sessions for embezzlement of the money. The deputy chairman ruled that there was no evidence to go to the jury of the defendant's employment as a servant, and the jury returned a verdict of guilty of larceny. Upon a case being reserved, the Court for Crown Cases Reserved were of opinion (Stephen, J., dissenting) that the prisoner was guilty of larceny as a bailee (*g*).

Larceny Act, 1861, s. 5.

By the Larceny Act, 1861 (24 & 25 Vict. c. 96), it is enacted,—

Three larcenies in six months from same person.

Sect. 5. "It shall be lawful to insert several counts in the same indictment against the same person, for any number of distinct acts of stealing not exceeding three, which may have been committed by him against the

(*d*) 6 M. & W. 499, *ante*, p. 315.

(*e*) 12 A. & E. 737, *ante*, p. 318, note *i*).

(*f*) *R. v. Jennings*, 1 Deurs. & B. 117.

(*g*) *R. v. de Banks*, 13 Q. B. D. 29.

same person within the space of six calendar months from the first to the last of such acts, and to proceed thereon for all or any of them" (*h*).

Sect. 6. "If, upon the trial of any indictment for larceny, it shall appear that the property alleged in such indictment to have been stolen at one time, was taken at different times, the prosecutor shall not by reason thereof be required to elect upon which taking he will proceed, unless it shall appear that there were more than *three takings*, or that more than the space of six calendar months elapsed between the first and the last of such takings, and in either of such last-mentioned cases the prosecutor shall be required to elect to proceed for such number of takings, not exceeding three, as appear to have taken place within the period of six calendar months from the first to the last of such takings" (*i*).

Where a single taking is charged, the prosecutor need not elect unless in certain cases.

And by the Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 5,—

14 & 15 Vict.
c. 100, s. 5.

"In any indictment for stealing, embezzling, destroying or concealing, or for obtaining by false pretences any instrument, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or fac-simile thereof, or otherwise describing the same or the value thereof."

Form of indictment.

Under sect. 9, should the evidence fail to prove the complete offence, the prisoner may be convicted of an *attempt* to commit it (*h*).

Conviction for attempt to steal.

Sect. 18. "In every indictment in which it shall be necessary to make any averment as to any money or any note of the Bank of England or any other bank, it shall be sufficient to describe such money or bank-note simply as money, without specifying any particular coin or bank-note, and such allegation, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank-note, although the particular species of coin of which such amount was composed, or the particular nature of the bank-note shall not be proved; and in cases of embezzlement and obtaining money or bank-notes under false pretences, by proof that the offender embezzled or obtained any piece of coin or bank-note, or any portion of the value thereof, although such piece of coin or bank-note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, or to any other person, and such part shall have been returned accordingly."

14 & 15 Vict.
c. 100, s. 18.

Coin and bank-notes may be described simply as money.

Various statutes have at different times been passed with a view to the prevention of the crime of larceny by servants, by the subjection of such persons to a heavier

Punishment of larceny by servants.

(*h*) *R. v. Heywood*, 33 L. J., M. C. 133.

(*i*) *R. v. Firth*, L. R., 1 C. C. R. 172.

(*k*) *R. v. Cheeseman*, 31 L. J., M. C. 89.

punishment than awaits ordinary offenders. These statutes, however, were all repealed by 24 & 25 Vict. c. 95, and at the same time the law upon the subject was consolidated in the Larceny Act, 1861 (24 & 25 Vict. c. 96).

Larceny Act,
1861, s. 67.

By sect. 67 of that statute it is enacted, that—

"Whosoever being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, shall steal any chattel, money or valuable security (*l*) belonging to or in the possession or power of his master or employer, shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding fourteen years, and not less than three (*m*) years, or to be imprisoned for any term not exceeding two years, with or without hard labour], and if a male under the age of sixteen years, with or without whipping."

Summary
conviction.
42 & 43 Vict.
c. 49.

Larceny or embezzlement by a clerk or servant may be dealt with summarily under the Summary Jurisdiction Act, 1879 (*n*), if the prisoner plead guilty.

Offender must
be a servant.

In order to convict a person of the aggravated offence of larceny *as a servant* (*o*), and subject him to the increased punishment provided for that offence, it is of course necessary that he should be a servant. We shall hereafter, whilst treating of embezzlement by servants, place before the reader the various decisions upon this point. But it may be here mentioned, that it has been held (*p*) that the driver of a glass coach hired for the day, is not the servant of the party hiring it within the meaning of the Act of 7 & 8 Geo. 4, c. 29, s. 46.

Driver of
glass coach
not servant of
hiring.

Public
servants

The cases of public servants under the Crown, and of persons employed in the police, are provided for by sects. 69 and 70 of the Larceny Act, 1861 (*q*).

Where, however, the money or other property had *never been in the possession* of the master, it was held that the

(*l*) *Ante*, p. 423, note (*r*).

(*m*) Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*n*) 42 & 43 Vict. c. 49. See the First Schedule to the Act.

(*o*) Upon an indictment for larceny, as a servant, the prisoner may, as we have seen, be convicted of simple larceny, *supra*, p. 442. The allegation in the indictment that A. B., "being the servant," &c., stole, &c., is sufficient, *R. v. Somerton*, 7 B. & C. 463.

(*p*) *R. v. Haydon*, 7 C. & P. 445.

(*q*) *Post*, p. 479.

servant was not guilty of *larceny* in misappropriating it. There could be no tortious taking in the first instance, and consequently no *trespass*, without which there could be no larceny (*v*). Thus, where (*s*) a shopman sold goods in the shop and pocketed the price, instead of putting it into the till, it was held that he could not be convicted of larceny of the money, as it had never been in his master's possession. The same law was laid down in a case where (*t*) a banker's clerk pocketed a 100*l.* note, instead of putting it into his master's drawer. These decisions gave rise to the first statute against embezzlement, 39 Geo. 3, c. 85. That statute, as well as 7 & 8 Geo. 4, c. 29, is now repealed; and the punishment of such offences is provided for by 24 & 25 Vict. c. 96, s. 68, the provisions of which will be stated presently. However, since the passing of 7 & 8 Geo. 4, it has been held that if the master *has had possession* of property, either by his own hands, or by the hands of his clerk or servant, a servant cannot be guilty of *embezzling* it, but if he purloin it, it will be *larceny*. Thus, where (*u*) a clerk in the employ of A. received from another clerk 3*l.* of A.'s money to pay for an advertisement, for which he only paid 10*s.*, but charged A. 20*s.*, pocketing the difference, all the judges held that he was not properly convicted of embezzlement under 7 & 8 Geo. 4, c. 29, s. 47.

But if such property is merely in the course of passing

Bull's case.

Bazeley's case.

Which gave rise to statutes against embezzlement.

Since which it is still larceny to take property out of master's possession.

But misappropriation

(*v*) See 2 Russ. on Cr. 122, 6th edit.

(*s*) *Bull's case*, cited 2 Leach, C. C. 841. Upon the authority of this case, it was held in *R. v. Headge*, Russ. & Ry. 160, that a servant, under similar circumstances, was properly indicted for embezzlement under the stat. 39 Geo. 3, c. 85. And see *Waite's case*, 1 Leach, C. C. 28, the case of a clerk in the Bank of England purloining a bond, which gave rise to the stat. 15 Geo. 2, c. 13.

(*t*) *Bazeley's case*, 2 Leach, C. C. 835. In *R. v. Rudick*, 8 C. & P. 237, a servant, sent out to collect money for his master, was robbed of it on his way home. In an indictment for the robbery the money was laid as the property of the master, and upon an objection to this being taken by counsel for the prisoners, Alderson, B., directed a fresh bill to be sent up to the grand jury, laying the money as the property of the servant: adding, "It is difficult to see how such an offence as embezzlement could have been a part of our criminal law, if the possession of the servant of property which had never come to the hands of the master were construed to be in the possession of the master."

(*u*) *R. v. Murray*, 1 Moo. C. C. 276; 5 C. & P. 145, note.

of goods
passing
towards
master's pos-
session em-
bezzlement.

R. v. Masters,

to the master, and have *not arrived into his possession*, although in the hands of a clerk, if that clerk misappropriates it, he will be guilty of embezzlement. Thus, where (*r*) it was the duty of A.'s clerks to receive money on account of A., and pay it over to A.'s superintendent, whose duty it was to pay it over to the prisoner, whose duty it was to pay it over to A.'s cashier, these persons being all servants of A., the prisoner, having received money in this way and embezzled it, was held to be properly convicted of embezzlement under 7 & 8 Geo. 4, c. 29, s. 47.

To steal
goods once
completely
arrived in
master's pos-
session,
though
merely con-
structively,
is larceny.

R. v. Watts,

And if the property has *once completely arrived* into the master's possession (although merely constructively by the hands of the thief) and be there misappropriated, the offence will be larceny. Thus in *R. v. Watts (w)*, the prisoner was a clerk in the Globe Insurance Office, and it was his duty to receive from the messenger the banker's pass-book, together with the vouchers, to compare the entries in the pass-book with the entries in the books of the company, and to preserve the vouchers for the use of the company. One day the prisoner fraudulently destroyed a cheque for 1,400*l.*, which was delivered to him with the pass-book in the usual way, and altered the pass-book, having, in fact, paid the amount into his own private bankers, and he was held to have been properly convicted of *stealing* the cheque from his masters, as his possession of it was the possession of his masters.

"The paper in question," said Lord Truro, "as soon as it had passed from the hands of the messenger, and arrived at its ultimate destination, the custody of the prisoner for the directors, was really in their possession, and when he afterwards abstracted it for a fraudulent purpose he was guilty of stealing it from them, as a butler, who has the keeping of his master's plate, would be guilty of larceny if he should receive plate from the silversmith for his master at his master's house, and afterwards fraudulently convert it to his own use, before it had in any other way than by his act of receiving come to the actual possession of the master."

"This case is distinguishable from those in which the goods have only

(*r*) *R. v. Masters*, 2 Carr. & K. 930. But see 2 Russ. on Cr. 322, 6th edit., where there is a note by the late Mr. Graves in which he gives his reasons at length for thinking this case wrongly decided.

(*w*) 2 Den. C. C. 14.

been in the course of passing towards the master, as in *Reg. v. Masters* (x), where the prisoner's duty was only to receive the money from one fellow-servant and pass it on to another, who was the ultimate accountant to the master. Here the paper had reached its ultimate destination when it came to the prisoner's keeping, and that keeping being for his masters, made his possession theirs."

A similar decision was arrived at in the following case (y). *R. v. Wright*. The prisoner was employed by a banking company to manage a branch for them at B. He provided an office for the bank in his own house. The office was furnished by the company, and an iron safe provided there by them, of which there were duplicate keys, the company keeping one, and the prisoner the other. It was the duty of the prisoner to receive money from customers, to place it at night in the safe, to pay away from time to time as much as was required for the business of the bank, to pay cheques, to pay over weekly any balance not required for the business at B., and to send in weekly accounts to the company. He carried on the business, receiving and paying money, and sending in weekly accounts. In auditing his accounts a deficiency of 3,000*l.* was discovered, and he admitted that he had taken that amount of money. It was held that he was properly convicted of larceny, as a clerk, in having stolen some money received from customers, which before he stole it had been placed in the safe, and made the subject of a weekly account; the Court considering the case similar to the ordinary one of a shopman robbing a till.

The question, therefore, as to what amounts to a delivery to the master, is one of importance. Some cases on this point have already been considered (z).

What amounts to delivery to master.

Where a man sent his servant to fetch home some straw which he had bought, and the servant brought it home, took it into his master's court-yard, and put it

R. v. Hayward.

(x) *Supra*, note (v).

(y) *R. v. Wright*, 1 Dears. & B., C. C. 431. In this case it was assumed that the money was placed in the safe, as it was the prisoner's duty to place it there.

(z) Such as *Spears' case*, *ante*, p. 429; *R. v. Reed*, *ante*, p. 431.

down at the stable door, which was locked; and afterwards, on the door being opened, put part of the straw into the hay loft, but took the rest away again, and sold it, Tindal, C. J., held that the putting it down at the stable door was a delivery of it to the master, and that the servant could not be convicted of embezzlement. He was found guilty of larceny (*a*).

Punishment of
embezzlement.

By the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 68, it is enacted, that—

24 & 25 Vict.
c. 96, s. 68.

"Whosoever being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant (*b*) shall fraudulently embezzle any chattel, money, or valuable security which shall be delivered to or received or taken into possession by him for or in the name or on the account of his master or employer, or any part thereof, shall be deemed to have feloniously stolen the same from his master or employer (*c*), although such chattel, money or valuable security was not received into the possession of such master or employer otherwise than by the actual possession of his clerk, servant or other person so employed; and being convicted thereof, shall be liable to" [same punishment as for larceny by servants, *ante*, p. 444.]

Summary
conviction.

Embezzlement by clerks or servants, &c., under forty shillings, may also be dealt with summarily under the Summary Jurisdiction Act, 1879 (*d*), if the prisoner consents or pleads guilty.

What con-
stitutes em-
bezzlement.

In order to constitute an offence within the above section (68) three things must concur (*e*).

(*a*) *R. v. Hayward*, 1 C. & K. 518; *R. v. Roberts*, 3 Cox, C. C. 74.

(*b*) By the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 248, a person appointed to any office or service by or under a local marine board shall be deemed to be a clerk or servant, within the meaning of sect. 68 of the Larceny Act, 1861 (relating to embezzlement), and if any such person fraudulently applies or disposes of any chattel, money or valuable security received by him (whilst employed in such office or service) for or on account of any local marine board or for or on account of any other public board or department for his own use, or any use or purpose other than that for which the same was paid, entrusted to or received by him, or fraudulently withholds, retains or keeps back the same or any part thereof contrary to any lawful directions or instructions which he is required to obey in relation to his office or service, he shall be guilty of embezzlement within the meaning of the said section. In the indictment the property may be laid in the board, and s. 71, *post*, p. 472, applies.

(*c*) It would seem that if the words "and may be indicted and tried accordingly" had been added here, many of the difficulties attendant upon the preservation of the nice technical distinctions between larceny and embezzlement might have been avoided.

(*d*) 42 & 43 Vict. c. 49, First Schedule.

(*e*) And see *per* Lord Ellenborough in *R. v. Johnson*, 3 M. & S. 548, 549, on the old stat. 39 Geo. 3, c. 85.

1. The prisoner must be (*f*) a clerk or servant, or employed for the purpose or in the capacity of a clerk or servant.

2. He must receive or take into his possession some chattel, money or valuable security, for or in the name or on account of his master or employer.

3. He must fraudulently embezzle the same or some part thereof.

The former Act relating to this offence contained the words "by virtue of his employment." But this phrase led to some difficulties, and was therefore designedly omitted from the Larceny Act, 1861 (*g*).

It will be convenient to consider these three heads separately. Many of the decisions which will be mentioned took place under the old stat. 39 Geo. 3, c. 85, and 7 & 8 Geo. 4, c. 29, but they may with propriety be inserted here.

1. *The prisoner must be a clerk or servant, or employed for the purpose or in the capacity of a clerk or servant.*

It was the opinion of all the judges that an apprentice (*h*), and also a female servant (*i*), were within the stat. 39 Geo. 3, c. 85. And it is clear that a female servant is within the statute of Geo. 4 (*k*), which "there can be no doubt would also be held to embrace persons employed in the capacity of clerks or servants to corporations (*l*), though not appointed under the common seal (*m*).

Apprentice.

Female
servant.

Servant to
corporation;
though not
appointed
under common
seal.

(*f*) Or have been at the time of the offence committed: *R. v. Lovell*, 2 M. & Rob. 236.

(*g*) *R. v. Cullum*, L. R., 2 C. C. R. 28.

(*h*) *R. v. Mellish*, Russ. & Ry. 80.

(*i*) *R. v. Smith*, Russ. & Ry. 267.

(*k*) See 7 & 8 Geo. 4, c. 28, s. 14.

(*l*) *Per* Vaughan, J., in *Williams v. Stott*, 1 Cr. & M. 689. See the remark made upon this dictum of Vaughan, J., in Greaves' edition of Russ. on Crimes, vol. ii., p. 417, note (*v*), 4th edit. The learned editor, however, appears when he wrote that note to have forgotten the difference between the wording of the statute of Geo. 3 and that of Geo. 4. The interpretation put upon the word "person" by 7 & 8 Geo. 4, c. 28, s. 14, would seem hardly applicable to 7 & 8 Geo. 4, c. 29, s. 47, unless the "person" were a servant.

(*m*) *R. v. Beacall*, 1 C. & P. 457.

Director and
servant of a
company.

Where the prisoner was a shareholder and a director of a limited company and was also appointed a servant of the company, it was held (*n*) that the fact of his being a director did not preclude him from also acting as a servant, and that he was rightly convicted of embezzlement as a "clerk or servant."

Servant of un-
incorporated
joint-stock
company.

Where the prisoner was indicted as the servant of A. and others, and it appeared that A. & Co. were a joint-stock company, but there was no evidence of their incorporation, it was held that the prisoner was properly convicted (*o*).

Clerk to
trustees of
savings bank.

It has been held that the clerk of a savings bank was properly described in an indictment for embezzlement under the statute of Geo. 4, as clerk to the trustees, although he was elected every year by ballot at a meeting of the managers (*p*). And that a clerk appointed by a station committee of four several railway companies to receive the charge for the carriage of parcels by all of them, might be described as the servant of the four companies or of the committee (*q*).

Clerk to joint-
stock bank,
though
shareholder.

A clerk to a joint-stock banking company, established under 7 Geo. 4, c. 46, may be convicted of embezzling the money of the company, although he is a shareholder or partner in such company (*r*).

Clerk to local
board.

And it has been held that a son who, during the illness of his father, who was clerk to a local board, assisted him in his office and in the business of the board, was "employed as a clerk" to the board, although not appointed or paid by them, and was rightly convicted of embezzlement (*s*).

n *R. v. Stuart*, 1891, 1 Q. B. 310.

o *R. v. Frankland*, 32 L. J., M. C. 69.

p *R. v. Jenson*, 1 Moo. C. C. 434; and see *R. v. Hall*, 4 Moo. C. C. 471; *R. v. Callahan*, 8 C. & P. 154. As to what is sufficient evidence of acting as a trustee to support inference of legal appointment, see *R. v. Essex*, 1 Deas. & B. 369.

q *R. v. Bayley*, 26 L. J., M. C. 4.

r *R. v. Atkinson*, Car. & M. 525; and see *R. v. Watts*, 2 Den. C. C. 14, ante, p. 446, where a clerk, who was also a shareholder in an insurance office, was convicted of embezzlement.

s *R. v. Foulker*, L. R., 2 C. C. R. 150.

The Larceny Act, 1868 (31 & 32 Vict. c. 116), in order to prevent part ownership being relied upon as a defence to an indictment for larceny or embezzlement, provides :—

Embezzlement
by a part-
owner.

Sect. 1.—If any person being a member of any co-partnership or being one of two or more beneficial owners of any money, goods, or effects, bills, notes, securities or other property, shall steal or embezzle any such money, goods, or effects, bills, notes, securities or other property of or belonging to any such co-partnership or to such joint beneficial owners, every such person shall be liable to be dealt with, tried, convicted and punished for the same as if such person had not been or was not a member of such co-partnership or one of such beneficial owners.

Under this Act a member of an association, the object of which was merely the spiritual and mental improvement of its members, was held (*t*) not to be a member of a “co-partnership.”

R. v. Robson.

But a prisoner was held to be rightly convicted (*u*) on an indictment under this Act charging him with having, whilst one of several beneficial owners, embezzled money belonging to the beneficial owners, it being proved that he was a member and treasurer of a trading club, which was an unregistered association of more than twenty members, and that he had received money belonging to the association, and had failed to account for it.

R. v. Tankard.

And where a committee formed of the members of two friendly societies for the purpose of conducting a railway excursion, appointed certain persons to sell the excursion tickets to the members of the societies, and the money received from the sale of the tickets was to be paid over to a specified person, and to belong to the two societies in certain proportions, and the prisoner, who was a member of the committee, was one of those nominated to sell tickets, but received no remuneration for so doing, and a certain number of tickets were given him by the committee to sell; he sold some and fraudulently appropriated the proceeds to his own use: it was held that he was not liable on an indictment for embezzlement

Member of
committee to
manage
excursion.

R. v. Bean.

(*t*) *R. v. Robson*, 16 Q. B. D. 137.

(*u*) *R. v. Tankard*, (1894) 1 Q. B. 548.

charging him as servant to the other members of the committee (*r*).

Treasurer of friendly society.

R. v. Tyree.

Again it has been held (*r*) that a treasurer of a friendly society (duly enrolled and certified) without salary, whose duty it was to receive monies paid into the society and hold them to the order of the secretary, countersigned by the chairman or a trustee, and to account whenever called upon, was not a clerk or servant within 24 & 25 Viet. c. 96, s. 68.

R. v. Murphy.

In a case in Ireland, where it appeared that all the property of the society was vested in *trustees*, it was held by the Court of Criminal Appeal there, that he might be described as servant to the trustees (*r*). But that case, as explained by Bovill, C. J., in *R. v. Tyree*, did not decide that the treasurer was a servant.

R. v. Hughes.

In *R. v. Hughes* (*y*) it was held that a person employed by a farmer *on one occasion* as a drover in Smithfield to drive some cattle home to the purchaser and receive the price was a servant within the meaning of the Act of Geo. 4.

Occasional servant.

Clerk and traveller employed by many houses.

And it was held, that a person occasionally employed (*z*): a person employed upon commission to travel for orders and to collect debts, although employed by many different houses on each journey, and although he paid his own expenses out of his commission, and did not live with any of his employers, nor act in any of their counting-houses (*u*) ; were servants within the stat. of Geo. 3.

(*r*) *R. v. Bryn*, 33 L. J., M. C. 59.

(*w*) *R. v. Tyree*, L. R., 1 C. O. R. 177.

(*x*) *R. v. Murphy*, 1 Cox, C. C. 101. See also *R. v. Proud*, 31 L. J., M. C. 71 [this case was not argued by counsel].

(*y*) *R. v. Hughes*, 1 Moo. C. C. 370. See, however, *R. v. Hey*, 2 C. & K. 983; cited *ante*, p. 411.

(*z*) *R. v. Spencer*, Russ. & Ry. 299; *R. v. Wainall*, 5 Cox, C. C. 326; and see *R. v. Hughes*, 1 Moo. C. C. 370; *R. v. Metcalfe*, 1 Moo. C. C. 133; *R. v. Tongue*, 30 L. J., M. C. 49, *post*, p. 460; but see *R. v. Freeman*, 5 C. & P. 531, *contra*.

(*u*) *R. v. Carr*, Russ. & Ry. 198; and see *R. v. Leach*, 3 Stark. 70. In *R. v. Hute*, 8 C. & P. 742, the driver of a coach, who was employed by one of the proprietors, was held to be his servant; and see *R. v. Batty*, 2 Moo. C. C. 257; and *R. v. Tate*, 30 L. J., M. C. 112, where the doubt suggested by Lord Wensleydale, in *R. v. Goodbody*, 8 C. & P. 667, is cleared up.

So, as we have seen, a person employed to carry out coals and sell them, and who was allowed a portion of the profits for his remuneration, was held, by a majority of the judges, to be a servant within the meaning of the stat. of Geo. 3, although it was contended that he was a partner (*b*).

Person employed to carry out and sell coals, though entitled to part of profit.

And the cashier and collector of a firm, who had in addition to a fixed yearly salary a percentage on the profits, but was not liable for losses of the firm, was held to be not the less on that account the servant of the firm, and liable to indictment for embezzlement (*c*).

Collector paid by percentage on profits in addition to salary.

And a servant, who manufactured an article from materials the property of his master for a customer, and who, having received the price, embezzled the whole of it, was held to be within the Act, although, by the agreement between him and his master, he was to have at the week's end a proportion of the price for his work (*d*).

Servant employed to manufacture from master's materials, though entitled to part of price.

And it has been held (*e*), that a person employed by the overseers to collect the poor-rate was properly described as the servant of the overseers, without mentioning the churchwardens; and he having embezzled a rate collected from B., was held properly convicted under the stat. of Geo. 4.

Collector of poor-rate employed by overseers.

A person employed by the overseers of a township as their accountant and treasurer, and who received and paid all monies receivable or payable on their account, was held to be a clerk or servant within 39 Geo. 3, c. 85 (*f*).

Accountant to overseers.

And the treasurer to the guardians of the poor of Birmingham, who was appointed under the stat. 1 & 2 Will. 4, c. lxxvii., was held to be the servant of the guardians within 7 & 8 Geo. 4, c. 29 (*g*).

Treasurer to guardians.

And now the Poor Law Amendment Act, 1849 (12 & 13

Poor Law Amendment Act, 1849.

(*b*) *R. v. Hartley*, Russ. & Ry. 139.

(*c*) *R. v. Macdonald*, 31 L. J., M. C. 67.

(*d*) *R. v. Huggins*, Russ. & Ry. 145.

(*e*) *R. v. Adcy*, 1 Den. C. C. 571. And see *R. v. Ward*, Gow, N. P. R. 168, the case of an extra collector of poor-rates, paid by a percentage on his collection, who was held to be a servant within 39 Geo. 3, c. 85.

(*f*) *R. v. Squires*, Russ. & Ry. 349.

(*g*) *R. v. Welch*, 2 C. & K. 296.

Vict. c. 103), in order to avoid difficulties that had arisen in describing the offices of such persons, has provided by sect. 15 :—

Collectors of
poor-rates
and assistant
overseers.

That in respect of any indictment or other criminal proceeding, every collector or assistant overseer appointed under the authority of any order of the Poor Law Commissioners or the Poor Law Board (*h*), shall be deemed and taken to be the servant of the inhabitants of the parish, whose money or other property he shall be charged to have embezzled or stolen, and shall be so described; and it shall be sufficient to state any such money or property to belong to the inhabitants of such parish, without the names of any such inhabitants being specified.

Property.

Superinten-
dent of police.
R. v. Baxter.

And a superintendent of county police has been held to be properly described as the clerk and servant of the chief constable, appointed under 2 & 3 Vict. c. 93 (*i*). In that case it was the superintendent's duty to receive from the constables money received by them, and return to the chief constable a statement of such moneys; and to pay the constables' wages weekly. In practice he kept accounts with the men, and set off sums received by them against their wages, the balance struck going over to next account, and so on weekly, no money passing. A constable thus accounted for 2*l.* 3*s.* 6*d.*, but the superintendent fraudulently omitted that sum in his account with the chief constable, and subsequently denied its receipt. He was, nevertheless, held to have received it *constructively*, by the mode in which the accounts were kept, and convicted of embezzlement.

County court
bailiff.

A county court bailiff appointed by the high bailiff is rightly described as a servant of the high bailiff (*j*).

But not
person em-
ployed to
collect sacra-
ment money.

But it has been held that the clerk of a chapelry, who was employed to collect the sacrament money from the

h In *R. v. Carpenter*, 1 L. R., 1 C. C. R. 29, an assistant overseer appointed by the inhabitants in vestry under 59 Geo. 3, c. 12, s. 7, was held to be properly described as a "servant of the inhabitants of the parish." This is also a correct description of an assistant overseer who has been appointed by a parish council under sect. 5 of the Local Government Act, 1894, and money collected by him from the ratepayers is rightly laid as the property of the inhabitants: *R. v. Smallman*, (1897) 1 Q. B. 4. *See* also, the appointment of such an officer under sect. 5 is complete by election, and no document is required beyond a minute of the appointment: *R. v. Powell*, 1899 1 Q. B. 396.

(*i*) *R. v. Baxter*, 5 Cox, C. C. 302.

(*j*) *R. v. Parsons*, 16 Cox, C. C. 498; distinguishing *R. v. Glover*, 33 L. J., M. C. 159.

communicants, was not the servant of the minister, churchwardens, or poor of the township, in which the chapel was situate (*k*). And that a schoolmaster of a charity school, no part of whose duty it was to receive subscriptions, but who, on one occasion, was requested by the treasurer to receive a sum of 15*l.* on account of the schools, did not stand in such a relation to the treasurer or the committee, as to bring him within the Act (*l*).

nor school-
master em-
ployed on one
occasion by
treasurer :

And a person, chosen and sworn in at a court-leet held by a corporation, as chamberlain of certain commonable lands, who received no remuneration, but whose duties were to collect money from the commoners and others using the commonable lands, to employ the money so received in keeping the lands in order, to account at the end of the year to two aldermen of the corporation, and to pay over any balance in his hands to his successor, was held not to be a servant within the meaning of the Act of Geo. 4 (*m*).

nor person
sworn in as
chamberlain
to collect
money for
commonable
lands ;

And a similar decision was made in the case of a commission agent, who was also paid a nominal salary of 1*l.* a year (*n*). The prisoner kept a refreshment house, and was employed by the prosecutors to get orders for their goods, collect the money, and pay it over. He was paid by commission. He was to go about among the farmers to get orders, but no definite time was to be spent in so doing, and he was styled their agent for the district. The prosecutors had a store at B. under the control of the prisoner, who supplied customers from the stores pursuant to the orders he obtained. In order to obtain the security of a guarantee society for the prisoner's conduct, and in compliance with their regulations, it was arranged that the prosecutors should pay the prisoner 1*l.* a year. The prisoner having got into arrear was treated by the prosecutors as a debtor for the amount. The prisoner

nor a commis-
sion agent
receiving a
nominal
salary.

R. v. Walker.

(*k*) *R. v. Burton*, 1 Moo. C. C. 237. It does not appear, from the report, who had the appointment of the clerk.

(*l*) *R. v. Nettleton*, 1 Moo. C. C. 259.

(*m*) *Williams v. Stott*, 1 Cr. & M. 675.

(*n*) *R. v. Walker*, 27 L. J., M. C. 207.

fraudulently appropriated money received from customers, and gave a false account. It was held that he could not be convicted of embezzlement, as he was not the servant of the prosecutors, but rather their agent.

Nor an agent
merely en-
titled to com-
mission.

R. v. May.

Again, in a case (*o*) in which the prisoner was employed to obtain orders for the sale of iron manufactured by the prosecutors in a different county and was to receive a commission on orders obtained by him, but was to account to the prosecutors for any money he might receive, he received money for them which he fraudulently appropriated: it was held, that he could not be considered to have been the clerk or servant of the prosecutors or employed by them in that capacity, but was rather an agent. However, in a case (*p*), which occurred very soon afterwards, in which the prisoner was engaged by the prosecutor, a shirt manufacturer, as a commercial traveller, paid by commission and at liberty to receive orders for others than the prosecutor, he was held to be a servant, and not the less so that he was at liberty to obtain orders for several masters.

But com-
mercial
traveller em-
ployed by
several persons
held to be a
servant.

R. v. Tite.

Distinction
between
traveller and
commission
agent.

The distinction seems to be that a traveller is under orders to go here and there; but a commission agent may go where he likes. Whether or not the control necessary to constitute the relationship of master and servant existed, would be a question for the jury unless the agreement was in writing, in which case it must be construed by the Court (*q*).

R. v. Bowers.

That the distinction above pointed out is the true one, is shown by the case of *R. v. Bowers* (*r*). The prisoner there was permitted by his employers to carry on a retail

o) *R. v. May*, 30 L. J., M. C. 81.

p) *R. v. Tite*, 30 L. J., M. C. 112.

q) If the servant be engaged, or his duties defined by a written instrument, that of course must be produced, and parol evidence is not admissible to show the terms of hiring or duties unless notice to produce has been given: *R. v. Clapton*, 3 Cox, C. C. 126, where Patteson, J., said he remembered two or three unreported cases tried at Warwick, one before Coleridge, J., in which it was held that under such circumstances the agreement must be produced.

r) L. R., 1 C. C. R. 11; approved in *R. v. Negus*, L. R., 2 C. C. R. 34; and followed with reluctance in *R. v. Harris*, 69 L. T. Rep. 25.

coal trade on his own account, and was employed by them, *R. v. Bowers*. under an agreement in writing, as their agent for the sale of coals on commission. He was also to collect moneys in connection with his orders, but not to be held responsible for bad debts, and the commission not to be due till the money had been received by his employers, he was not to keep such moneys more than a week, and a month's notice on either side to be given to terminate the agreement. He was held not to be a servant within 24 & 25 Vict. c. 96, s. 68, and Erle, C. J., said :—

“The cases have established that a clerk or servant must be under the orders of his master or employed to receive the monies of his employer to be within the statute: but if a man be entrusted to get orders and to receive money, getting the orders when and where he chooses and getting the money when and where he chooses, he is not a clerk or servant within the statute.”

Again, where the prisoner was employed on the following “Terms of employment—*Re John Marshall*—1s. per ton procuration fee payable out of the first payment, 4 per cent. for collecting, and 3*d.* on the last payment. Collections to be paid in Friday evening before five, p.m., or Saturday before two, p.m., cash orders 1s. 6*d.* per ton”; it was held that he was not a servant, and that the case was within *R. v. Bowers* (s). *R. v. Marshall*.

A carrier, exclusively employed between glove-sewers and the manufacturers, has been held (t) not to be the servant of either, but a bailee. A. and B. were two among other sewers of gloves residing at C., the manufacturers residing at D. The prisoner was a carrier residing at C., and was exclusively employed between the glove-sewers at C. and the manufacturers at D. The sewers were not *Not a carrier who was a bailee.* *R. v. Gibbs*.

(s) *R. v. Marshall*, 21 L. T., N. S. 796.

(t) *R. v. Gibbs*, Dears. C. C. 445. He would now be indicted under 24 & 25 Vict. c. 96, s. 3, as a fraudulent bailee. In *R. v. Hoare*, 1 Fost. & F. 647, it was held by Wightman, J., after consulting Pollock, C. B., that a person who had *formerly been* a servant, and was employed to collect debts without remuneration, and who, under the circumstances, was *not a servant*, could not be indicted under 20 & 21 Vict. c. 54, s. 4, as a bailee; as a person who received money on behalf of another did not thereby become a bailee of the money, not being bound to hand over the particular sum which he had received.

R. v. Gibbs.

known to the manufacturers, but when a sewer wanted work, the prisoner gave her name and a number to the manufacturers, and received from them unsewn gloves for her to sew. Each sewer, having her number, sent back by the prisoner the gloves when sewn, with her name pinned to the parcel. These parcels the prisoner delivered to the manufacturers, and if the parcels were found correct, he received the total amount due to the sewers in one sum, and fresh parcels of unsewn gloves. His duty then was to deliver to each sewer her fresh work, and also the money due to her, deducting his charge. If any work was missing the manufacturer looked to the sewer if found, but if not, to the prisoner for it. The prisoner, according to the course above stated, took out numbers for A. and B., and having received money for both of them from the manufacturers, denied the receipt of it, and applied it to his own use. It was held that he was not the servant of either A. or B., but merely a bailee, and was only guilty of a breach of trust, not of embezzlement.

2. *He must receive or take into his possession some chattel, money or valuable security, for or in the name or on account of his master or employer.*

Although the words "by virtue of his employment" were designedly omitted from the Larceny Act, 1861, yet it must still be the master's money which is received by the servant, in order to bring a case within the enactment (*n*).

Receipt of
money on
account of
master.

The receipt of money "on account of" his master, means the receipt of money which the servant is bound to account for to his master; and a servant is not the less bound to account for money to his master merely because the persons who paid him the money knew nothing of his master (*r*).

(*n*) Blackburn, J., in *R. v. Callum*, L. R., 2 C. C. R. 28.

(*r*) *R. v. Gale*, 2 Q. B. D. 111.

But the captain of a barge who was ordered to bring it back empty from a certain place, and forbidden to take a particular cargo, but who nevertheless loaded such a cargo in the barge and received the freight which he never accounted for, was held (y) not guilty of embezzlement, because the money was not received by him for, or in the name of, or on account of his master. He did not profess to carry the cargo or receive the freight for his master, and the person paying the money did not know for whom he paid it, and the prisoner declared that the barge came back empty.

So, too (z), it was held that a gamekeeper could not be convicted of embezzling his master's rabbits, where, not being authorized to take or kill rabbits for his own use, he took and killed some wild rabbits on his master's land and converted them dishonestly to his own use by selling them.

But if a person be employed only on one occasion to receive money, if, acting at that time in the capacity of a servant, he receive money and misappropriate it, it will be embezzlement.

Servant employed to receive money, though only on one occasion.

Thus, where (a) a person employed by a carrier was on one occasion directed by his employer to receive a sum of 2*l.*, which he did receive, but misappropriated, he was held rightly convicted of embezzlement.

Spencer's case.

The prisoner was secretary to a money club. By the rules he was to make out the promissory notes to be signed by members and their sureties to whom money was advanced. He was a member of the committee, whose duty it was to inquire into the sufficiency of proposed sureties. He was also to summon special meetings, and to countersign all cheques on the treasurer. Members paid their instalments on club nights to the stewards who handed same over to the treasurer. In consequence

R. v. Tongue.

(y) *R. v. Cullum*, 1. R., 2 C. C. R. 28.

(z) *R. v. Read*, 3 Q. B. D. 131.

(a) *R. v. Spencer*, Russ. & Ry. 299; and see *R. v. Hughes*, 1 Moo. C. C. 370; *R. v. Smith*, Russ. & Ry. 516, *post*, p. 461; *R. v. Stanbury*, 2 Cox, C. C. 272; *R. v. Winnall*, 5 Cox, C. C. 326.

R. v. Tongue. of doubts of the solvency of the makers of a particular promissory note, it was, by direction of the club, handed over to the prisoner by the payee, the trustee of the club, with directions to sue upon it, or to get better security for the money advanced. The prisoner employed an attorney, sued on the note in his own name, received payment from one of the makers, appropriated the money to his own use, denied the receipt of it, and returned the note to the trustee as unpaid. It was held that the duties of the prisoner as secretary were sufficiently cog-nate to that of the receipt of money for the club to make his employment to receive money in this instance an employment of him as clerk or servant, and that, notwithstanding he sued in his own name to get the money, he still received it for and on account of his employers, and he was convicted of embezzlement under 7 & 8 Geo. 4, c. 29 (*b*).

And servant authorized to receive money from a particular class of customers, who received money from another class, within the Act.
Beechey's case.

And where a servant was authorized to receive money from a particular class of customers, but received and appropriated money from others, it was held that he might be convicted of embezzlement (*c*).

And so (*d*) a clerk, who was employed as evening collector to a carcase butcher, in which capacity it was his duty to receive every evening from the porters employed in the business such monies as they received from customers in the course of the day, and pay the amount over to M. (another clerk), but who was not expected in the course of his employment to receive money from customers themselves, having called on some debtors of his master, and received from them a cheque which he embezzled, was held to have received it "by virtue of his employment," within the meaning of the Act of

b *R. v. Tongue*, 30 L. J., M. C. 49.

c *R. v. Williams*, 6 C. & P. 626. From that report it does not appear that the prisoner was authorized to receive money at all. But in *R. v. Hawton*, 7 C. & P. 281, Alderson, B., puts the decision on the ground stated in the text.

d *R. v. Beechey*, Russ. & Ry. 319; but see *R. v. Thorley*, 1 Moo. C. C. 343.

Geo. 3. And a similar decision was made in the case of a toll-collector (*e*), who on one occasion was ordered to receive a debt due to his employers, which he received and embezzled, "because though this was out of the ordinary course of the prisoner's employment, yet as he was servant to H. and J., and in his character of servant to them had submitted to be employed by them to receive the note and monies, and had received them by virtue of his being so employed, the case was within the statute." *R. v. Smith.*

The secretary of a benefit building society, according to the certified rules had nothing to do with the receipt of money when paid off by mortgagees, but the rules were not strictly followed and the secretary was in the habit of receiving such monies, and on one occasion embezzled a sum so paid to him. It was held that the course of business was evidence that in addition to his duties as secretary under the rules he was employed by the trustees as their servant to receive the mortgage money, and received it by virtue of his employment, and might be convicted of embezzlement under 7 & 8 Geo. 4, c. 29, s. 47 (*f*). *R. v. Hastie.*

In the following case (*g*) it was held that a contractor's carman receiving money for the contractee, could not be convicted upon an indictment which charged him with embezzling money belonging to the contractor. The prosecutor W. had contracted with the Great Northern Railway Company to find and provide them with necessary horses and carmen for the purpose of conveying and delivering to the customers of the company the coals of the company in their own waggons, and that *he or his* Contractor's carman embezzling contractor's money. *R. v. Beaumont.*

(*e*) *R. v. Smith*, Russ. & Ry. 516. But in *Crow's case*, 1 Lew. 88 (2 Russ. on Cr. 444), which was precisely similar, Lord Wensleydale directed an acquittal, observing that he had never approved of the decision in *R. v. Smith*.

(*f*) *R. v. Hastie*, 32 L. J., M. C. 62. Of this case it is to be observed that, although it occurred long after 24 & 25 Vict. c. 96 came into operation, the indictment appears to have been framed on 7 & 8 Geo. 4, c. 29, probably from the thoughtless use of an obsolete printed form.

(*g*) *R. v. Beaumont*, Dears. C. C. 270. This case was twice argued on account of a difference of opinion among the judges.

R. v. Beaumont. *carmen* should, day by day, duly *account* for and deliver to the company's coal-manager all monies received from customers in payment for coals so delivered. By the contract the *carmen* were to obey the orders of the company's coal-manager in all things connected with the carrying and delivery of coal and receipt and payment of money. The delivery notes, as well as receipted invoices of the coals, were handed to W.'s *carmen*, and the former were taken to his office to be entered in his books; but the invoices receipted by the company were left with the customer on payment of the amount. The prisoner B. was servant of W., and was employed by him as *carmen* in the delivery of coals pursuant to the said contract, and it was B.'s duty to pay over direct to the clerks of the company any money he might receive for such coals. B. delivered coals to one of the company's customers, and brought the delivery order to the office to be entered. He received for the coals 5*l.* 10*s.*, leaving the receipted invoice with the customer, but converted the money to his own use. He was indicted for embezzlement as servant of W.; but it was held by a majority of the judges that he could not be convicted, as the evidence showed such a privity as to make him the agent of the company in receiving the money, and that the money was not received on account of W., but on account of the company.

R. v. Thorpe. However, in a subsequent and very similar case (*h*) a different decision was arrived at; but *R. v. Beaumont* was not cited. H. was agent of the Great Northern Railway Company at Huddersfield, for the purpose of carrying out goods to be there delivered by the company, and employed his own servants, and used his own drays and horses, and was answerable to the company for monies collected by his servants for the carriage of goods. The prisoner T. was H.'s servant, and, as such, it was

(*h*) *R. v. Thorpe*, Dears. & B. 562. This case was not argued by counsel. See *R. v. Gale*, 2 Q. B. D. 111.

his duty to go out with a dray, to take with him goods, and a delivery-book handed to him by J. E., a clerk in the service of the company, and to deliver the goods according to the directions contained in the delivery-book, and to receive the amount of carriage therein specified as due to the company, and *then to account for the sums so received with J. E.* On several occasions T. took out goods for the company, and received from the consignees payments for the carriage as in the delivery-book, amounting to 6*l.*, which sums were paid to, and received by him as due to the company; and the receipts were given by T. in the name of the company. T. absconded, and never paid these sums either to J. E. or to his master H., but H. paid up the amount to the company in pursuance of his arrangement. T. was indicted for embezzlement *as the servant of H.*, and convicted, and the conviction was upheld, as, although T. received the money "in the name" of the company, he received it "on account" of H.

If the money misappropriated has been received from the master (*i*), or if it has been in his possession (*j*), the servant cannot, as we have seen, be convicted of embezzling it, but should be convicted of larceny, which, as we shall hereafter see, may now be done, although the prisoner be indicted for embezzlement. In a case (*k*), however, where it appeared from the evidence that the prosecutors were spinners, and that the prisoner, who was in their employ, had been from time to time entrusted by them with money for the purpose of paying wages to workpeople; and the duty of the prisoner was

Servant stealing money received from master, or which has been in his possession, larceny.

R. v. Butler.

(*i*) *R. v. Hawkins*, 1 Den. C. C. 584; *R. v. Beaman*, Carr. & M. 595, where a servant, sent with 6*s.* to buy coals, pocketed one, and was convicted of larceny. *R. v. Goode*, Carr. & M. 582; and see *R. v. Johnson*, 21 L. J., M. C. 32; *R. v. Cooke*, *ante*, p. 437.

(*j*) *R. v. Murray*, 1 Moo. C. C. 276, *ante*, p. 445; and see *R. v. Masters* and *R. v. Watts*, *ante*, p. 446.

(*k*) *R. v. Butler*, 2 Carr. & K. 340. Where a servant, who was employed by her mistress to pay bills, received from her money to pay a bill of a cheesemonger, named Sadler, and brought back the bill with the words "paid Sadler" on it, which she herself had written, having pocketed the money, she was convicted of forgery: *R. v. Houseman*, 8 C. & P. 180.

R. v. Butler. to keep an account in a book of the monies which he so received and disbursed, and the book when produced contained three entries made by the prisoner, in each of which he charged his employers with more money than he had paid on their account, and the book had been balanced by the prisoner: but there was no evidence that he had actually accounted with his employers, Wightman, J., stopped an indictment for larceny, observing that, perhaps the prisoner never intended to deliver this account, or, if he did, to deliver it with explanations; but *this* was no accounting, and the prisoner was acquitted.

But if received from third person, though master's agent, held to be embezzlement.

So, if servant sent to get change embezzles the change.

But if a tradesman, suspecting his servant's honesty, give marked money to a friend to purchase something at his shop, and the servant, instead of putting the money into the till pocket it, this offence will be embezzlement (*l*). If the money has been *put into the till* and is abstracted thence, it is larceny.

Where a servant is sent by his master to get change for a note, gets it and embezzles the *change*, he is not liable at common law for *stealing that*, but should be indicted for embezzlement, as the master never had possession of *the change* (*m*).

3. *He must fraudulently embezzle the same, or some part thereof* (*n*).

Embezzlement may be defined as the fraudulent retention of personal property of any kind belonging to another whilst in the course of passing to the possession

[*l*] *R. v. Hodge*, Russ. & Ry. 160; *S. C. nom. R. v. Hedges*, 2 Leach, 1033. In that case it is said, "It seems to be the opinion of the judges that the stat. 39 Geo. 3, c. 85, did not apply to cases which are larceny at common law." In Russ. on Crimes, vol. ii., p. 416, 4th edit., it is said that the enactment of the new stat. like the repealed stat. has the effect, it should seem, of constituting the offence described in it a larceny. *R. v. Hedges* was followed in *R. v. Gill*, 1 Dears. C. C. 289.

[*m*] *R. v. Sallows*, 1 Moo. C. C. 129; *R. v. Thomas*, 9 C. & P. 741; *R. v. Reynolds*, 2 Cox, C. C. 170. If he steal *the note* it is larceny, as he only had the *custody*, not the possession of that: *Russ's case*, ante, p. 429; *R. v. Atkinson*, 1 Leach, C. C. 302; and see *R. v. Walsh*, 4 Taunt. 258; *R. v. Goode*, Carr. & M. 582; *R. v. Smith*, 1 Carr. & K. 423; *R. v. Johnson*, 21 L. J., M. C. 32.

[*n*] The embezzlement need not take place *whilst* servant, if the receipt were whilst servant: *R. v. Lovell*, 2 M. & Rob. 236.

of the owner. It is not sufficient, however, in support of a charge of embezzlement, to prove a mere receipt, and non-payment over of money that is a mere matter of account. A positive refusal to account must be shown (*o*). Thus, where (*p*) a man gave money to his servant to pay taxes, and the only evidence of embezzlement was that the collector had never received the money, it was held that the servant could not be convicted of embezzlement. So, where (*q*) the clerk to the proprietors of a coach, whose duty it was to receive money for passengers, &c., enter the sums in a book, and remit the money weekly to his employers, duly charged himself in his book with all sums received, but did not remit the money to his employers, as he ought to have done, it was held that he could not be convicted of embezzlement.

Refusal to account must be shown.

R. v. Smith.

R. v. Hodgson.

And in *R. v. Jones* (*r*) it was held that a clerk who had merely omitted to enter in his book a sum of money which he had received could not be convicted of embezzlement, as it did not appear that he had denied the receipt of it, or gave any false account respecting it.

Mere omission to account no embezzlement.

But if he had rendered an account, in which the sums received were omitted, that would be evidence of embezzlement (*s*). And it was held by Coleridge, J. (*t*), that a

Aliter, if account containing omission.

(*o*) In addition to the cases cited in the text in support of this position, the case of *R. v. Taylor*, 3 B. & P. 596, may be referred to. In that case it was held that the offence was completed in the county in which the clerk refused to account; and, accordingly, that he might be indicted and tried in that county, though he received the money in another county. Now he may be indicted in either, 7 Geo. 4, c. 64, s. 12; and see *R. v. Hobson*, Russ. & R. 56; *R. v. Murdock*, 21 L. J., M. C. 22; *R. v. Rogers*, 3 Q. B. D. 28.

(*p*) *R. v. Smith*, Russ. & Ry. 267.

(*q*) *R. v. Hodgson*, 3 C. & P. 422; but see *R. v. Jackson*, 1 C. & K. 384; and *R. v. Butler*, 2 C. & K. 340, *ante*, p. 463; see, however, *R. v. Grove*, *post*, p. 467. In *R. v. Lister*, 26 L. J., M. C. 26, Pollock, C. B., said, "I entirely dissent from the dictum of Vaughan, B., in *R. v. Hodgson*."

(*r*) 7 C. & P. 833; and see another case against the same person, 7 C. & P. 834. Making a false entry would be evidence of embezzlement, *Re Windsor*, 34 L. J., M. C. 163.

(*s*) *R. v. Creed*, 1 Carr. & K. 63. See *R. v. Butler*, 2 C. & K. 340, *ante*, p. 463, a case where a servant had made up his account, but had never delivered it; and it was held no accounting.

(*t*) *R. v. Jackson*, 1 Carr. & K. 384. In *R. v. Wortley*, 21 L. J., M. C. 44, Lord Campbell said, "There are many authorities which show that the denial of the receipt of the money by the prisoner constituted an embezzlement."

Wilful omission to account, embezzlement.

Leaving situation and absconding.

R. v. Williams.

baker's servant, whose duty it was, on the evening of every day to render an account of all the monies received during the day for his master, and immediately pay over the amount, having *wilfully omitted* to account, might be convicted of embezzlement, as such an omission was equivalent to a denial of the receipt of the money. And where (u) a female servant was sent to receive rent due to her master, received the rent and went off to Ireland, it was held, by the same learned judge, that the circumstance of her *quitting her place and going off to Ireland* was *evidence* from which a jury might infer that she intended to appropriate the money, and she was found guilty.

Entry in one book not an accounting where duty to enter in several.

R. v. Lister.

So in a case (v) in which it appeared to be the duty of L., the prisoner, to receive remittances from customers for his master, to enter the amounts received in a cash-book, to furnish an extract from the cash-book to the cashier, also to enter the amount to his master's credit in a banker's book, and to pay the amount with others, from time to time into the bank, and also to enter each amount in his master's ledger to the credit of the customer who paid it. Having received a sum of money from a customer, L. did not enter it in the cash-book, or in the extract furnished to the cashier, or in the banker's book, or pay the amount into the bank for his master, but he *did* enter it in the ledger to the credit of the customer. He was nevertheless held to have been rightly convicted of embezzlement, and it was also held that the making the entry in the ledger did not exempt him from punishment.

And where an assistant overseer who collected poor-rates entered money received in a book, charging himself with it, but omitted to pay it into the bank to the

(u) *R. v. Williams*, 7 C. & P. 338.

(v) *R. v. Lister*, 26 L. J., M. C. 26. In *R. v. Betts*, 1 Bell, C. C. 90, it was held that a miller's foreman, who had authority to sell flour and enter the sale in a book, could not be convicted of *larceny* of some flour which he sold without entering the sale in a book, but should have been indicted for *embezzlement* of the money received for it.

overseer's account, he was held to be rightly convicted of embezzlement (*w*).

But where a servant, having received money admitted the receipt, *and promised to account, but did not* do so, it was held by Erskine, J. (*x*), that he could not be convicted of embezzlement. In that case, the collector of a water company, as was his practice, gave the turncock three receipts for water rate, desiring him to receive the amounts. He received the money, and, when asked, admitted that he had done so, and said he would pay it over on Monday, but absconded.

And where (*y*) the master of a coal ship retained part of the freight received for carriage of coals, *claiming a right* to do so according to a recognized custom between owners and captains in the course of business, Cresswell, J., held that he could not be convicted of embezzlement.

In support of an indictment for embezzlement, it is, in general, necessary to prove that *some specific sum* has been embezzled. But in one case, that rule appears to have been relaxed (*z*). In that case the prisoner was cashier in a bank. His duty was to take charge of the cash, and when any payment was made into the bank, in money and paper, the course was for him to hand over the paper to a clerk, and to enter the cash received in a book, kept by himself, called the "money-book." It was also his duty at the close of each day, to see that the cash in hand agreed with the "money-book," and to strike a balance denoting the sum in cash which he had in his charge, and which ought to have been kept either in a drawer in the counter, of which he had the key, or in a box in the banking-house, of which also he had the key. One day the cash in the money-book, at the close of business, was 1,762*l.*, which was duly carried forward, and formed the first item in the next day's account.

Promise to account, but omission to do so, no embezzlement.
R. v. Creed.

Claim of right no embezzlement.
R. v. Norman.

Embezzlement of *some specific sum* must be proved.
R. v. Grove.

(*w*) *R. v. Guelder*, 30 L. J., M. C. 34.

(*x*) *R. v. Creed*, 1 Carr. & K. 63.

(*y*) *R. v. Norman*, Carr. & M. 501.

(*z*) *R. v. Grove*, 7 C. & P. 635.

R. v. Grove. On the latter day, at the close of business, the prisoner made the balance in the money-book 1,309*l.*, which amount he ought to have in one or other of the above-named places of deposit. Upon examination, however, it was found that, instead of 1,309*l.*, the prisoner had only 345*l.*, leaving a deficiency of 964*l.* The prisoner, who *admitted* that he was short about 900*l.*, was indicted for embezzling "money to a large amount, to wit, 500*l.*" The only witness against the prisoner was the partner in the bank, who discovered the delinquency, and who could not say when the money had been purloined, from what persons it had been received, what sort of money had been abstracted, or whether from the till, or upon the receipt from customers. The jury found the prisoner guilty of embezzlement to the amount charged, and, after argument and considerable doubt, eight judges, against seven, held that there was sufficient evidence to go to the jury of the prisoner having received certain monies on a particular day, and for them to find that he embezzled the sum mentioned in the indictment. However, in a subsequent case (*a*), where a shopman was indicted for embezzlement, and the counsel for the prosecution offered to prove that there was a deficiency in the prisoner's accounts, but said that there was no proof of the embezzlement of any particular sum, and cited *R. v. Grove*, Alderson, B., directed an acquittal, saying, that—

"Whatever difference of opinion there might be in the case of *R. v. Grove*, proceeded more upon the peculiar facts of that case than upon the law. It is not sufficient to prove, at the trial, a general deficiency in account. Some specific sum must be proved to be embezzled, in like manner as in larceny some particular article must be proved to have been stolen."

R. v. Chapman.

And again, in a case (*b*) where it was the duty of a clerk and traveller to receive money for his employer,

a *R. v. Jones*, 8 C. & P. 288. Of this case it may be remarked that Alderson, B., was one of the seven dissentient judges in *R. v. Grove*, and in *Grove's* case there was an admission, which in this case there was not.

b *R. v. Chapman*, 1 C. & K. 119; *R. v. Welch*, 2 C. & K. 296.

pay wages out of it, and make entries of all monies received and paid in a book, and to enter the weekly totals of receipts and payments in another book, upon which last book he, from time to time, paid over balances to his employer. The clerk, having entries in the first book amounting to 25*l.*, entered them in the second as 35*l.*, and two months afterwards, in accounting with his master, made his balance 10*l.* too little by these means, and paid it over accordingly. On this evidence he was indicted for embezzling the 10*l.*, but Williams, J., asked the counsel for the prosecution, "Can you show any precise sum received by the prisoner, on account of his master, and the whole or part of that very sum appropriated by him to his own use?" And in the absence of such evidence, directed an acquittal.

However, in the following case (*c*), Erle, C. J., allowed *R. v. Lambert.* a prisoner to be convicted without such specific proof. L. was indicted for embezzling the sum of 270*l.*, part of a sum of 2,783*l.* 7*s.* 9*d.*, which he had received on account of the Receiver-General to her Majesty's Customs. L. was assistant teller to the Customs. It was his duty to receive money from merchants and others who had to pay money to the Receiver-General and enter such receipts in a cash-book. He had also, in the course of his employment, to make certain payments and enter them on the other side of the same book, and balance the amounts each day, paying over so much of the surplus as was in notes to a superior officer and retaining the cash, which was carried to the next day's account. When he paid over the notes it was his duty to give the same officer a memorandum of the receipts and disbursements of the day. One day he was ordered, about eleven o'clock, to make up his accounts, but continued to receive money until two, when he left the office and did not return. His desk and books were then examined, and in the latter were found, entered as

(*c*) *R. v. Lambert*, 2 Cox, C. C. 309; and see *R. v. Moah*, Dears. C. C. 626, *post*, p. 480.

*R. v. Lum-
bert.*

received, several sums, amounting to 2,783*l.* 7*s.* 9*d.*; and on the other side payments, amounting to 130*l.* 13*s.* 3*d.* The balance found, which ought to have been 2,652*l.* 14*s.* 6*d.*, was 270*l.* short. The whole of the money was received between ten and two o'clock on that day. On the part of the prisoner it was contended, that he could not be convicted of embezzlement as there was no evidence showing the appropriation of any particular sum received from any one person. But Erle, C. J., said,—

"I think the offence is sufficiently made out within the meaning of the statute (*d*), if the jury are satisfied that the prisoner received in the aggregate the amount with which he appears to have charged himself, and that he absconded, or refused, when called upon, to account, leaving a portion of the gross sum deficient. There would be a constant failure of justice if I were to decide otherwise, since it is impossible, in cases like the present, where a number of different amounts of money have been received, to specify which sum or sums, or the parts of which sum or sums, have been embezzled."

R. v. Hall.

Where a clerk received six bank-notes, on his master's account, in payment of a particular debt, and made an entry in his master's book of a smaller sum as received, but afterwards paid over to his master the *identical notes* which he had received, applying them, in his account, to another debt received by him for his master, he was held to have been rightly convicted of embezzlement in respect of *these six notes* (*e*).

No objection
that master
had no right
to the money,
if received on
his account.

It is, however, no objection to an indictment for embezzlement that the master had no right to the money; if it be received by the clerk or servant by virtue of his employment and on account of his master, it will be sufficient (*f*).

Embezzle-
ment by
secretary of
society not
enrolled.

And it has been held to be embezzlement in the secretary of a society fraudulently to withhold money received from a member to be paid over to the trustees;

R. v. Hall.

(*d*) It does not appear from the report whether L. was indicted under 7 & 8 Geo. 4, or 2 Will. 4, c. 4; but most probably the *latter*.

(*e*) *R. v. Hall*, 3 Stark. 67; Russ. & Ry. 463. Such a case as this is not very likely to occur again since 24 & 25 Vict. c. 96, s. 71, *post*, p. 472.

(*f*) *R. v. Beacall*, 1 C. & P. 454.

and that he might be stated to be the clerk and servant of the trustees, and the money might be stated to be their property, *though the society was not enrolled*, and though the money ought in the ordinary course, to have been received by a steward (*g*). However, in another case, where a society, in consequence of administering to its members an unlawful oath, was an unlawful combination and confederacy under the stats. 39 Geo. 3, c. 79 and 57 Geo. 3, c. 19, s. 25, it was held that a person charged with embezzlement as clerk and servant to such society could not be convicted (*h*).

Clerk of
illegal society
cannot be
convicted of
embezzle-
ment.

R. v. Hunt.

A receipt or any other unstamped instrument which from not being duly stamped is inadmissible as evidence in civil proceedings, is nevertheless available as evidence in criminal proceedings (*i*).

Unstamped
receipt.

A person who receives goods, &c., knowing them to have been *embezzled*, may be convicted on a common indictment charging him as a receiver of *stolen* goods. Therefore, where W. and T. were charged on an indictment, first, with *embezzling* certain oats, secondly, with being servants of A. B. and *stealing* his oats, and there was a fourth count charging F. with receiving certain oats feloniously stolen, knowing them to have been feloniously stolen; and the jury found W. guilty on the first count of embezzlement, acquitted T. and found F. guilty on the fourth count of receiving, the conviction was held to be good; and Pollock, C. B., said, "It seems very likely that the statute provided that embezzlement should be deemed stealing for the express purpose of providing for the case of receivers, there being no statute in terms applicable to receiving goods knowing them to have been embezzled" (*j*).

Indictment
against
receivers.

R. v. Frampton.

(*g*) *R. v. Hall*, 1 Moo. C. C. 474. And before trades unions were legalized it was held that the servant of a trades union might be convicted of embezzling the funds of the society, although some of its rules were void as being in restraint of trade, *R. v. Stainer*, L. R., 1 C. C. R. 230.

(*h*) *R. v. Hunt*, 8 C. & P. 642.

(*i*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 14 (4).

(*j*) *R. v. Frampton*, 27 L. J., M. C. 229. See 24 & 25 Vict. c. 96, s. 91.

Place of trial.

R. v. Rogers.

Where a country traveller, whose duty it was to collect outstanding accounts and remit the money "at once" to his employers in Middlesex, collected an account at York which he never remitted, but subsequently sent from Doncaster to his employers, and they received in Middlesex, a letter which the jury found amounted to a denial of the receipt of the money at York. It was held that he might be tried at the Middlesex sessions (*k*).

R. v. Treadgold.

But where it was the duty of a commercial traveller to remit daily to his employers the monies which he collected, and on the 1st and 2nd of March he collected at Newark two sums which he did not account for: there was no evidence that he returned to Grantham where he resided on either of those days; in the first week of April his employer went to G. and saw him and taxed him with receiving monies and not accounting for them; whereupon he handed to his employer a list of monies received and not accounted for, including the above two sums. It was held that there was no evidence of embezzlement within the borough of G., and that he could not be tried at G. quarter sessions (*l*).

INDICTMENT (*m*).

By the Larceny Act, 1861 (24 & 25 Viet. c. 96), s. 71, for preventing difficulties in the prosecution of offenders in any case of embezzlement, fraudulent application or disposition hereinbefore mentioned, it is enacted, that—

Three distinct acts of embezzlement may be charged in the same indictment.

"It shall be lawful to charge in the indictment and proceed against the offender for any number of distinct acts of embezzlement, or of fraudulent application or disposition, not exceeding three (*n*), which may have been committed by him against Her Majesty or against the same master or employer within the space of six months from the first to

k *R. v. Rogers*, 3 Q. B. D. 28.

l *R. v. Treadgold*, 48 L. J., M. C. 102.

m The indictment must allege that the goods embezzled were the property of the master. *R. v. McGregor*, 3 B. & P. 106; *R. v. Johnson*, 3 M. & S. 539; see *R. v. Moah*, Dears. C. C. 626.

n See *R. v. Balls*, L. R., 1 C. C. R. 328, where prisoner was to account weekly for small sums received during the week, and he was held rightly convicted of embezzling various small sums received in three consecutive weeks.

the last of such acts (*o*): and in every such indictment, where the offence shall relate to any money or any valuable security, it shall be sufficient to allege the embezzlement or fraudulent application or disposition to be of money, without specifying any particular coin or valuable security; and such allegation, so far as regards the description of the property, shall be sustained if the offender shall be proved to have embezzled or fraudulently applied or disposed of any amount (*p*), although the particular species of coin or valuable security of which such amount was composed shall not be proved; or if he shall be proved to have embezzled or fraudulently applied or disposed of any piece of coin or any valuable security, or any portion of the value thereof, although such piece of coin or valuable security may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same or to some other person, and such part shall have been returned accordingly."

As to allegation and proof of the property embezzled.

This provision was intended to remove considerable difficulties which formerly beset a prosecutor, and often prevented a prosecution under the repealed statute. It was found, however, on the other hand, that it frequently caused great hardships to prisoners, who, from the general mode in which indictments are framed under it, could not obtain any satisfactory information as to the specific charges made against them (*q*). To remedy this evil, it has become the practice for judges, on motion supported by affidavit (*r*), to grant an order for particulars, which ought at least to contain the names of the persons from whom the sums of money are alleged to have been received (*s*).

Object of that Act.

Particulars.

And it was held (*t*), that if a servant was indicted under the Act of Geo. 4, for embezzlement, and the indictment contained only one count, charging the receipt of a gross sum on a particular day, if it turned out that the

Prosecutor confined to one sum where gross sum charged and several sums proved.

(*o*) And see 24 & 25 Vict. c. 96, s. 5. *ante*, p. 442.

(*p*) But if the prisoner has received a cheque and there is no evidence that it has been converted into money, he cannot be convicted of embezzling money. *R. v. Keena*, L. R., 1 C. C. R. 113.

(*q*) It is conceived that this observation applies with twofold force since 24 & 25 Vict. c. 96, s. 72. *post*, p. 474.

(*r*) The affidavit should state that the prisoner does not know the charges intended to be brought against him, that it is necessary for his defence to be furnished with the particular charges, and that he has applied to the prosecutor for a particular and been refused, see 2 Russ. on Crimes, 872, note, 6th edit.

(*s*) *R. v. Hodgson*, 3 C. & P. 422; *R. v. Bootyman*, 5 C. & P. 300.

(*t*) *R. v. Williams*, 6 C. & P. 626.

money was received in different sums on different days, the prosecutor must make his election and confine himself to one sum and one day.

Three counts
advisable.

R. v. Purchase.

In an indictment under this section it is the safest course to have three separate counts, each of the two last of which should aver that the money was not only received, but embezzled within six months from the day mentioned in the first count. Where an indictment contained only one count, which charged that within six calendar months the prisoner *received* three sums, laying a day to the receipt of each, and that "on the several days aforesaid" the prisoner embezzled these sums, it was held bad, because it did not show that the sums were

R. v. Noake.

embezzled within six months of each other (*u*). And where an indictment contained three counts, the first of which was in the usual form, but the second stated "that within six calendar months from the day mentioned in the first count of this indictment," to wit, &c. at &c., the said N. being then and there employed, &c. did by virtue of his employment, &c. receive, &c. and the said last-mentioned money, to wit, on the day and year last aforesaid, at &c. feloniously did embezzle, &c. and the third was in the same form. Cresswell, J., held the second and third counts bad, and confined the prosecutor to evidence on the first count only (*v*).

24 & 25 Vict.
c. 96, s. 72.

By the 24 & 25 Vict. c. 96, it is enacted, sect. 72, that—

Persons indicted for embezzlement as a clerk, &c., not to be acquitted if the offence turn out to be larceny, and *vice versa*.

"If, upon the trial of any person indicted for embezzlement or fraudulent application or disposition as aforesaid, it shall be proved that he took the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of embezzlement or fraudulent application or disposition, but is guilty of simple larceny, or of larceny as a clerk, servant, or person employed for the purpose, or in the capacity of a clerk or servant, or as a person employed in the public service or in the police, as the case may be; and thereupon such person shall be liable to be punished in the same

(u) *R. v. Purchase*, Carr. & M. 617.

(v) *R. v. Noake*, 2 Carr. & K. 620.

manner as if he had been convicted upon an indictment for such larceny ; and if, upon the trial of any person indicted for larceny, it shall be proved that he took the property in question in any such manner as to amount in law to embezzlement or fraudulent application or disposition, he shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of larceny, but is guilty of embezzlement or fraudulent application or disposition, as the case may be ; and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such embezzlement, or fraudulent application or disposition, and no person so tried for embezzlement, fraudulent application or disposition, or larceny as aforesaid, shall be liable to be afterwards prosecuted for larceny, fraudulent application or disposition, or embezzlement upon the same facts " (w).

Other Acts of Parliament have also at various times been passed for the protection of masters in trade from frauds and embezzlements of property by their servants. In this place, however, it is unnecessary to do more than refer to those Acts, most of which will be found in the Appendix.

Special Acts
for protection
of masters in
some trades.

When a servant who has robbed his master has been prosecuted and tried for the offence, the master *may*, if he thinks proper, sue him for the damages he has sustained thereby. But until the servant has been convicted, the master may find himself hindered in suing by the ancient principle of law that where a civil claim is founded upon a matter which might be the subject of an indictment for felony, the person seeking to enforce it should prosecute for the criminal offence before he can recover in the civil action (x). It would not prejudice the civil remedy that the offender was *acquitted* of the crime, if he was tried (y). And it would seem that if the

After trial for
crime, master
may sue
servant ;

(w) The restitution clause, sect. 100, applies to property embezzled.

(x) See *Wells v. Abrahams*, L. R., 7 Q. B. 544 ; *Appleby v. Franklin*, 17 Q. B. D. 93, and other cases cited, *ante*, p. 144. If any person misapplies the property of a friendly society, he may, on summary conviction, be fined and ordered to repay the money applied inproperly, and in default he may be imprisoned, Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 87, sub-s. 3. An order under this section to repay such money, followed by imprisonment in default of paying, is a bar to a subsequent action by the society for the recovery of such money, *Vernon v. Watson*, (1891) 2 Q. B. 288.

(y) *Crosby v. Leng*, 12 East, 409 ; *Stone v. Marsh*, 6 B. & C. 551 ; *Marsh v. Keating*, 1 B. N. C. 198 ; *White v. Spettigue*, 13 M. & W. 603.

or after his death his executors ; or make him bankrupt.

If servant go abroad with proceeds of felony, master may perhaps sue before trial for crimes.

Scott v. Lord Seymour.

Money stolen a good consideration for security thereto.

Chowne v. Baylis.

Statute of Limitations no bar.

Teed v. Beere.

servant die before conviction the master might maintain an action against the servant's executors (z).

A convicted felon may be adjudicated bankrupt upon an act of bankruptcy committed after his conviction (a).

If the servant abscond with the stolen property or money to a foreign country, it would seem to be no answer to an action in that country to recover the property or money, that by the law of England a prosecution for felony must precede an action to recover the proceeds of it (b). But the decision of the question would depend on the *lex fori* or law of the country in which the action is brought.

Where a servant robbed his master of money and before conviction deposited deeds, &c. as security for the amount stolen, and the master afterwards prosecuted to conviction, it was held by the Court of Chancery that the money taken was a good consideration for the security (c).

Where a barrister filed a bill to recover out of the assets of a deceased clerk an amount of fees which the clerk had received and embezzled in his lifetime, it was held in equity (d), that the Statute of Limitations could not be set up as a defence: for, said Stuart, V.-C.,—

"The clerk was clearly a receiver and agent by whom money was received in confidence, and therefore under the same implied contract as that supposed to arise out of the duty of trustees, assignees and executors, of faithfully, diligently and accurately accounting, when called upon, to his principal (e). That being so the money must be considered as money of the employer in the hands of his confidential agent. There had therefore been all along possession by the agent, but no adverse possession, and therefore the bar of the statute, which was founded on adverse possession, did not apply."

(z) *Wickham v. Gattrell*, 23 L. J., Ch. 783.

(a) *Ex parte Graves*; *Re Harves*, 19 Ch. D. 1.

(b) *Scott v. Lord Seymour*, 31 L. J., Exc. 457.

(c) *Chowne v. Baylis*, 31 L. J., Ch. 757. And see *Judley and West Branch Bank v. Spittle*, 1 John. & H. 14.

(d) *Teed v. Beere*, 28 L. J., Ch. 782. But in *Re Hawkins*, 28 W. R. 240, it was held that the Statute of Limitations might be barred by the course of dealing between master and servant.

(e) *Earl of Harbottle v. Vernon*, 14 Ves. 504; *Domeville v. Bailey*, 6 Ves. 136. See *Burdick v. Garrick*, L. R., 5 Ch. 233. In *Tidd v. Orrell*, (1893) 3 Ch. 154, it was held that time does not begin to run under the Statute of Limitations (21 Jan. 1), against a person who has entrusted money to another for safety till demand, though it was contemplated that the bailee might use the money in business.

If a warrant of attorney is given to his master by a servant charged with embezzlement upon a *distinct agreement* by the master *not to prosecute* the charge, the agreement is illegal, and the Court would upon a summary application set aside the warrant of attorney (*f*). But where a warrant of attorney was obtained from a servant upon a threat by his master that, if he did not go to his attorney and give satisfactory security for an amount which he ought to have accounted for, he would prosecute him for unlawfully making use of his money, the Court of Common Pleas refused to set it aside as there did not appear to have been any *agreement* not to prosecute. "Such an agreement," said Coltman, J., "is not to be inferred from hasty expressions used by a man when seeking to obtain security for a just debt" (*g*).

Security given on agreement not to prosecute set aside.

Mere threat not sufficient. *Ward v. Lloyd*.

If the Court should come to the conclusion that there was an implied term or condition not to prosecute, an agreement containing such a term would be founded on illegal consideration and void. The secretary of a building society was found to be a defaulter in his accounts and was threatened with a prosecution for embezzlement. Two of his relatives, upon his application for help, gave a written undertaking to the society to make good the greater part of the debt due from the secretary, the expressed consideration being the forbearance of the society to sue the secretary for that amount, and they also gave the society, as collateral security, two promissory notes and some title deeds. In doing this they were actuated by the desire to prevent the prosecution, and that was known to the directors of the society; but no promise was made not to prosecute. The Court, however, held that such a term was implied in the agreement, which was therefore void, as founded on an illegal consideration (*h*).

Agreement not to prosecute may be inferred.

(*f*) *Ex parte Critchley*, 3 D. & L. 527; and see *Collins v. Blantern*, 1 Smith's L. C.; *Keir v. Leeman*, 6 Q. B. 308; 9 Q. B. 371.

(*g*) *Ward v. Lloyd*, 6 M. & G. 785.

(*h*) *Jones v. Merionethshire Permanent Benefit Building Society*, (1892) 1 Ch. 173.

FALSIFICATION OF ACCOUNTS.

By the Falsification of Accounts Act, 1875 (38 & 39 Vict. c. 24), after reciting that it is expedient to amend the law so as to punish the falsification (*i*) by clerks, officers, servants, and others of their employers' accounts, books, writings, or documents, it is enacted—

Punishment
for falsifica-
tion of
accounts, &c.

1. That, if any clerk, officer, or servant, or any person employed or acting in the capacity of a clerk, officer, or servant, shall wilfully and with intent to defraud, destroy, alter, mutilate, or falsify any book, paper, writing, valuable security, or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or shall wilfully and with intent to defraud make or concur in making any false entry (*j*) in, or omit or alter, or concur in omitting or altering, any material particular from or in any such book, or any document or account, then in every such case the person so offending shall be guilty of a misdemeanor, and be liable to be kept in penal servitude for a term not exceeding seven years, or to be imprisoned with or without hard labour for any term not exceeding two years.

Intention to
defraud,
sufficient
indictment.

2. It shall be sufficient in any indictment under this Act to allege a general intent to defraud, without naming any particular person intended to be defrauded.

Act to be
read with
24 & 25 Vict.
c. 96.

3. This Act shall be read as one with 24 & 25 Vict. c. 96.

OFFENCES COMMITTED BY PERSONS EMPLOYED IN THE
PUBLIC SERVICE OR BY THE POLICE.

By the Embezzlement by Collectors Act, 1810 (50 Geo. 3, c. 59), s. 2, it is enacted, that—

50 Geo. 3,
c. 59, s. 2.

Officers
giving in
false state-
ments of
money in-
trusted to
their care,
misdemeanor,
&c.

"If any officer, collector or receiver, intrusted with the receipt, custody or management of any part of the public revenues, shall knowingly furnish false statements or returns of the sums of money collected by him, or intrusted to his care, or of the balances of money in his hands, or under his control, such officer, collector or receiver so offending, and being thereof convicted shall be adjudged guilty of a misdemeanor, and shall be adjudged to suffer the punishment of fine and imprisonment, at the discretion of the Court, and be rendered for ever incapable of holding or enjoying any office under the Crown."

[*i*] Some acts of falsifying accounts may also amount to forgery at common law or under the Forgery Act, 1861, *Re Artan*, (No. 2 (1896) 1 Q. B. 509.

[*j*] In *R. v. Williams*, 79 L. T. Rep. 739, the prisoner made an entry in his accounts of a certain amount due from him as "balance in hand." The amount was correct, but he was unable to produce it. It was held that though he might have embezzled this sum, yet the entry was not a false one within this Act.

And by the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 69, it is enacted, that—

“Whosoever being employed (*k*) in the public service of her Majesty, or being a constable or other person employed in the police of any county, city, borough, district or place whatsoever, shall steal any chattel, money, or valuable security (*l*), belonging to or in the possession or power of her Majesty, or intrusted to or received or taken into possession by him by virtue of his employment, shall be guilty of felony, and being convicted thereof shall be liable to” [same punishment as larceny by servants, except whipping, *ante*, p. 444].

Larceny by persons in the Queen's service, or by the police.

Sect. 70. “Whosoever being employed in the public service of her Majesty, or being a constable or other person employed in the police of any county, city, borough, district or place whatsoever and intrusted by virtue of such employment (*m*) with the receipt, custody, management or control of any chattel, money or valuable security, shall embezzle any chattel, money or valuable security which shall be intrusted to or received or taken into possession by him by virtue of his employment, or any part thereof, or in any manner fraudulently apply or dispose of the same or any part thereof to his own use or benefit or for any purpose whatsoever except for the public service, shall be deemed to have feloniously stolen the same from her Majesty, and being convicted thereof shall be liable to [same punishment as sect. 69, *supra*]; and every offender against this or the last preceding section may be dealt with, indicted, tried and punished either in the county or place in which he shall be apprehended or be in custody, or in which he shall have committed the offence: and in every case of larceny, embezzlement or fraudulent application or disposition of any chattel, money or valuable security in this and the last preceding section mentioned, it shall be lawful in the warrant of commitment by the justice of the peace before whom the offender shall be charged, and in the indictment to be preferred against such offender, to lay the property of any such chattel, money or valuable security in her Majesty.”

Sect. 70.

Embezzlement by persons in the Queen's service, or by the police.

Venue.

Form of warrant of commitment and indictment.

By the Public Stores Act, 1875 (*n*), if stores are found in the possession or keeping of a person being in her

Public stores.

(*k*) Acting in the employment is sufficient without proof of formal appointment, *R. v. Borrett*, 6 C. & P. 124; *R. v. Townsend*, Carr. & M. 178.

(*l*) See *ante*, p. 423, note (*r*).

(*m*) In *R. v. Townsend*, Carr. & M. 178, it was held that a post office letter-carrier, who was in the daily habit of calling at the lodge of G. Infirmary, and there receiving letters with a penny on each to prepay the postage, and taking them to the General Post Office, having embezzled some of the pence thus received, might be convicted under 2 Will. 4, c. 4, of which this is a re-enactment; as there was evidence to go to the jury that the pence were received by him by virtue of his employment as a letter-carrier. In *R. v. Lorell*, 2 Moo. & Rob. 236, it was held to be sufficient in an indictment under this Act, to state that a clerk embezzled money received by him whilst such clerk, without any more specific allegation, that he embezzled whilst clerk. It is remarkable that the words “by virtue of his employment,” which were designedly omitted in sect. 68 (*ante*, p. 449), are inserted in sects. 69 and 70.

(*n*) 38 & 39 Vict. c. 25, s. 9.

Majesty's service or in the service of a public department, then if such person does not satisfy the Court that he came lawfully by the stores so found, he is liable on summary conviction to a penalty not exceeding 5*l*.

R. v. Moah.

The following important case (*o*) may be mentioned here. M., an officer of inland revenue, received certain taxes in respect of which he was allowed to retain in his hands a balance of about 300*l*. to meet contingent expenses. It was his duty to render accounts to certain inspectors, and these accounts, when rendered, showed a much larger balance in his hands than he was allowed to retain. At last the General Surveyor of Inland Revenue examined M.'s accounts, and produced to him a statement extracted from them, showing a balance in his hands of upwards of 5,000*l*., which he admitted. The surveyor then asked him if he was prepared to pay over that balance, or any part of it, and he said no. The surveyor then reminded him that there was a balance of excise duties alone of about 300*l*. standing against him from the previous Monday. M. then took out 255*l*. in bank-notes, and a cheque for 25*l*. 8*s*. 4*d*., and a money order for 14*s*., and said that was all the money he had in the world. The surveyor then asked him what he had done with the rest, and he said he had spent it in an unfortunate speculation. He was indicted for embezzlement under 2 Will. 4, c. 4, s. 1, and convicted, as it was held by all the judges before whom the case was argued, that there was evidence of the receipt of a particular sum of 300*l*., and a misapplication of part of it. And Cresswell, J., after stating his opinion to that effect, added,—

"I by no means say that the conviction is not sustainable as to the 5,000*l*. It is a question of law of great importance, and the authorities are somewhat conflicting. In *R. v. Grove* (*p*), under circumstances somewhat similar, the conviction was sustained by a majority of eight judges to seven; but in a subsequent case the decision was not followed,

o *R. v. Moah*, Dears. C. C. 626.

p *Supra*, p. 467.

and was said to have proceeded upon some special facts. In *R. v. Lambert* (q), however, which cannot be distinguished from this case, my brother Erle held that evidence of a general deficiency was sufficient to sustain the indictment. As at present advised, I should say that the prisoner being shown by his own accounts to have a balance in hand of 5,000*l.* due to the Crown, and he making no attempt to explain it on the ground of error or loss of the money, merely says that he has expended it for his own purposes, he may upon that evidence be convicted of embezzling the money, and that having been once indicted for embezzling the whole amount, and either convicted or acquitted, he never could be indicted again for embezzling any part of it. I merely throw this out as showing my grounds for saying that I am by no means satisfied that this indictment is not sustainable as to the whole amount of the prisoner's deficiency."

R. v. Moah.

EMBEZZLEMENT BY OFFICERS OF THE BANK OF ENGLAND OR IRELAND.

By the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 73, it is enacted, that—

24 & 25 Vict.
c. 96, s. 73.

"Whosoever being an officer or servant of the governor and company of the Bank of England or of the Bank of Ireland, and being intrusted with (r) any bond, deed, note, bill, dividend warrant or warrant for payment of any annuity or interest or money, or with any security, money or other effects (s) of or belonging to the said governor and company, or having any bond, deed, note, bill, dividend warrant, or warrant for payment of any annuity or interest or money, or any security, money or other effects of any other person, body politic or corporate, lodged or deposited with the said governor and company, or with him as an officer or servant of the said governor and company, shall secrete, embezzle or run away with any such bond, deed, note, bill, dividend or other warrant, security, money or other effects as aforesaid or any part thereof, shall be guilty of felony: and, being convicted thereof, shall be liable at the discretion of the Court to be kept in penal servitude for life, or for any term not less than [three years, or to be imprisoned for any term not exceeding two years, with or without hard labour]."

Embezzle-
ment by
officers of the
Bank of
England or
Ireland.

And by the Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 6, it is enacted, that—

24 & 25 Vict.
c. 98, s. 6.

"Whosoever being a clerk, officer or servant of or other person employed or intrusted by the governor and company of the Bank of

Clerks of the
Bank making
out false
dividend
warrants.

(q) *Supra*, p. 469.

(r) A person cannot be convicted under this Act who merely *has access to* notes, &c., but is not *intrusted with* them. *R. v. Bakewell*, Russ. & Ry. 35; *Phillips v. Huth*, 6 M. & W. 572; *Hatfield v. Phillips*, 14 M. & W. 665.

(s) In *R. v. Aslett*, 1 Bos. & P., N. R. 1, it was held that Exchequer bills, signed by a person not authorized to sign them, were effects within the meaning of this Act.

England, or the governor and company of the Bank of Ireland, shall knowingly make out or deliver any dividend warrant or warrant for payment of any annuity, interest or money payable at the Bank of England or Ireland, for a greater or less amount than the person on whose behalf such warrant shall be made out is entitled to, with intent to defraud, shall be guilty of felony; and, being convicted thereof, shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding seven years, and not less than [three years, or to be imprisoned for any term not exceeding two years, with or without hard labour]."

OFFENCES BY OFFICERS AND SERVANTS EMPLOYED BY OR UNDER THE POST-OFFICE.

7 Will. 4 & 1
Vict. c. 36,
s. 25.

By the Post Office Offences Act, 1837 (7 Will. 4 & 1 Vict. c. 36), which consolidated the law relating to the post-office, it is enacted, sect. 25,—

Opening or
delaying post
letters a mis-
demeanor.

"That every person employed by or under the post-office who shall, contrary to his duty, open or procure or suffer to be opened a post letter, or shall wilfully detain or delay or procure or suffer to be detained or delayed a post letter, shall in England and Ireland be guilty of a misdemeanor, and in Scotland of a crime and offence, and, being convicted thereof, shall suffer such punishment by fine or imprisonment or by both as to the Court shall seem meet. Provided always, that nothing herein contained shall extend to the opening or detaining or delaying of a post letter returned for want of a true direction; or of a post letter returned by reason that the person to whom the same shall be directed is dead or cannot be found, or shall have refused the same, or shall have refused or neglected to pay the postage thereof, nor to the opening or detaining or delaying of a post letter in obedience to an express warrant in writing under the hand (in Great Britain) of one of the principal secretaries of state; and in Ireland under the hand and seal of the Lord Lieutenant of Ireland."

Proviso.

Sect. 26.
Embezzle-
ment, &c.,
of any letter
or packet,
felony.

Sect. 26. "That every person employed under the post-office who shall steal or shall for any purpose whatever embezzle, secrete (*t*), or destroy a post letter shall in England and Ireland be guilty of felony, and in Scotland of a high crime and offence, and shall, at the discretion of the Court, either be transported beyond the seas for the term of seven

(*t*) In an indictment for secreting a letter, it is not necessary to state the purpose for which the letter was secreted. *R. v. Hyman*, 2 C. & K. 859. In that case a person employed in the post-office committed a mistake in the sorting of two letters containing money, and to avoid a supposed penalty attached to such a mistake he threw the letters unopened and the money down a water-closet. Held by all the judges, that there was a larceny of the letters and money; and also a "secreting" of the letters within this statute. And see *R. v. Poynton*, 32 L. J., M. C. 29, where the prisoner put a letter in his pocket, instead of delivering it, and on his return to the post-office when asked why he had not delivered it, at once produced it unopened, he was nevertheless convicted.

years (*u*), or be imprisoned for any term not exceeding three years; and if any such post letter so stolen or embezzled, secreted or destroyed, shall contain therein any chattel or money whatsoever, or any valuable security, every such offender shall be transported beyond the seas for life."

Since the passing of this Act of Parliament, which contains no provision for the punishment of embezzlement of monies received for postage, it is usual (*x*) to indict and proceed against persons in the employ of the post-office who commit that offence under the provisions of the Acts relating to embezzlement by public servants. See now 24 & 25 Vict. c. 96, s. 70, *ante*, p. 497.

To convict a person under the 7 Will. 4 & 1 Vict. c. 36, evidence of acting in the employ of the post-office would be sufficient evidence of such employment, without proof of any formal appointment (*y*). Moreover, the prisoner must have been a servant in the employ of the post-office when he committed the offence imputed to him (*z*). And therefore it was held, under the old Post-office Act, 52 Geo. 3, c. 143, that a servant employed at a receiving-house to clean boots, &c., and who used to assist in tying up and sealing the post-office bag, was not a servant of the post-office (*a*). But a man employed by the postmistress to carry letters from one place to another at a weekly salary paid to him by the postmistress, but which was repaid to her by the post-office, was held to be a person employed by the post-office within that Act (*b*).

And now, by the interpretation clause (*c*) of 7 Will. 4 & 1 Vict. c. 36, the expression "persons employed by or under the post-office" shall include every person

Embezzling postage of letters.

Evidence of acting as servant sufficient.

But prisoner must have been a servant of the post-office.

Servant employed in receiving-house not such a servant.

Aliter, person hired by postmistress to carry letters.

Meaning of "person employed by or under the post-office."

(*u*) Penal servitude was substituted for transportation by the Penal Servitude Act, 1857 (20 & 21 Vict. c. 3), and that Act was amended by the Penal Servitude Act, 1891 (54 & 55 Vict. c. 69).

(*x*) *R. v. Townsend*, Carr. & M. 178.

(*y*) *R. v. Rees*, 6 C. & P. 606; *R. v. Borrett*, 6 C. & P. 124; *R. v. Townsend*, Carr. & M. 178.

(*z*) But he need not have *embezzled it whilst* in the employ, *R. v. Lovell*, 2 Moo. & Rob. 236.

(*a*) *R. v. Pearson*, 4 C. & P. 572.

(*b*) *R. v. Salisbury*, 5 C. & P. 155.

(*c*) Sect. 47. See also the Post Office Protection Act, 1884 (47 & 48 Vict. c. 76).

"Officer of
the post-
office."

employed in any business of the post-office, according to the interpretation given to the expression "officer of the post-office," and that expression shall include the postmaster-general and every deputy postmaster, agent, officer, clerk, letter-carrier, guard, post-boy, rider or any other person employed in any business of the post-office, whether employed by the postmaster-general, or by any person under him, or on behalf of the post-office.

R. v. Reason.

The prisoner was employed under the post-office as letter-carrier from C. to F. The letters were delivered to him in a sealed bag, which it was his duty to deliver, as he received it, to the postmaster at F., and, on such delivery, his duty was completed. One day he brought from C. the sealed bag containing letters, and delivered it safely at F. post-office, to the F. postmaster, whose duty it was to sort the letters in time to make up the bags for the mail passing through F. The prisoner, at the request of the F. postmaster, assisted in sorting, and while so doing, stole a letter containing 1*l*. It was held that he was a person employed under the post-office within the meaning of 7 Will. 4 & 1 Vict. c. 36, s. 26 (*d*).

Trap letter.
R. v. Rathbone.

Under the Post Office Offences Act, 1837, it was held that a post letter (*e*) meant a letter put in the ordinary way into the post-office. And, therefore, where (*f*) a letter-carrier was suspected, and, for the purpose of trying his honesty, an assistant inspector of letter-carriers enclosed a marked sovereign in a letter addressed to Mr. M., then sealed the letter, and marked it, as if it had been put into the post in the regular way as a paid

(*d*) *R. v. Reason*, 23 L. J., M. C. 11.

(*e*) The definition of "post letter" in the Act of 1837 was repealed and a new definition given by the Post Office Protection Act, 1884 (47 & 48 Vict. c. 76), ss. 19 and 20.

(*f*) *R. v. Rathbone*, Carr. & M. 220; *R. v. Shepherd*, 25 L. J., M. C. 52. In this case the prisoner was a suspected sub-sorter at the General Post Office. A letter was made up, cash enclosed, and the usual stamp put on the letter. The usual course of posting a letter at the outer hall of the General Post Office is to place it in the receiving box. In this case, however, an inspector delivered the letter at the window in the outer hall to another inspector, who handed it to a third, who, after locking it up for the night, handed it to a sorter, who placed it among the letters which it was prisoner's duty to sort. The prisoner was convicted of simple larceny.

letter, but it never was posted: on the following day, whilst the prisoner was not attending, the letter was put amongst a heap which he had to deliver, and the prisoner was seen to take the letter into his possession, but never delivered it, and the marked sovereign was found in his pocket: it was held, by all the judges, that he could not be convicted of stealing a "post letter." And a similar decision was made, under similar circumstances, where such a letter had an entirely fictitious address (*g*). In both the above cases, however, the prisoners were convicted of larceny. But, in a subsequent case, where such a letter *was* posted, although with a fictitious address the prisoner was convicted (*h*).

Fictitious
address.
R. v. Gardner.

R. v. Young

A servant was sent to the post with a letter and a penny to prepay the postage, but finding the shop-door of the receiving house shut, she put the penny inside the letter, fastened it in with a pin, and dropped it into the letter-box, intending that the penny should be applied to the payment of the postage. A messenger in the General Post Office stole this letter, with the money in it, and Lord Denman held that it came within the description of the Act of Parliament, viz., a letter containing money, although the money was not put in for the purpose of being conveyed in the letter (*i*).

R. v. Mence

S., postmistress at G., received a letter from D., with 1*l.* for a post-office order, to be obtained at L., 3*d.* for the poundage, 1*d.* for the postage, and 1*d.* for the messenger, who was to get the order. The letter when received by S. was unsealed, but addressed; she in due course delivered it to the prisoner, who was the post-office messenger, with the money, and instructed him to obtain the order at L., enclose it in the letter and post the letter at L. He pocketed the money and never delivered the letter at L.; and it was held by Cresswell, J., that under these

R. v. Bieker-staff.

(*g*) *R. v. Gardner*, 1 C. & K. 628; but see *R. v. Newey*, *ib.* 630, note; *R. v. Young*, 2 C. & K. 466.

(*h*) *R. v. Young*, 2 C. & K. 466.

(*i*) *R. v. Mence*, Carr. & M. 234.

circumstances the letter must be considered as a post letter, and the prisoner in the employ of the post-office; and he was convicted under the statute (*j*).

R. v. Glass.

But in another case (*k*), where a person delivered two 5*l.* notes to the wife of the postmaster at C. (where money orders were not granted), and asked her to send them by the letter-carrier from C. to W., in order that he might get two 5*l.* money orders at the W. post-office: she gave instructions accordingly to the letter-carrier, and by his desire put the notes into his bag; but he afterwards took them out, and pretended he had lost them (having had no intention of stealing them at the time he received them): it was held by the fifteen judges that this was not larceny, the notes not being in the possession of the prisoner in the course of his duty as a post-office servant.

R. v. Harley.

A post-office being at an inn, a person was sent to put a letter containing promissory notes into the post. He took it to the inn with money to prepay the postage: he did not put it into the letter-box, but laid the letter with the money upon it upon a table in the passage of the inn, in which passage the letter-box was, and pointed out the letter to the prisoner, who was a female servant in the inn, who said "she would give it to them." The prisoner, who was not authorized by the innkeeper, her master, to receive letters for him, stole the letter and its contents: and Patteson, J., held that this was not a post letter within the meaning of the Act; so the prisoner was convicted of larceny (*l*).

11 & 12 Vict.
c. 88.

Penalty on
officers of
post-office
issuing money
orders
fraudulently.

By the 11 & 12 Vict. c. 88, s. 4, it is enacted, that every officer of the post-office who shall grant or issue any money-order with a fraudulent intent shall, in England and Ireland, be guilty of felony, and in Scotland, of a high crime and offence, and shall, at the discretion of the Court, either be transported (*m*) beyond the seas for a term of seven

(*j*) *R. v. Beckerstaff*, 2 C. & K. 761.

(*k*) *R. v. Glass*, 2 C. & K. 395.

(*l*) *R. v. Harley*, 1 C. & K. 89.

(*m*) Penal servitude was substituted for transportation by the Penal Servitude Act, 1857 (20 & 21 Vict. c. 3), and that Act has been amended by the Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), which allows three years' penal servitude or two years' imprisonment.

years [the rest of the section was repealed by the Statute Law Revision Act, 1894].

By sect. 5, the property in anything stolen from the post-office may be laid, in indictments, &c., as in "her Majesty's Postmaster-General," without any further or other description whatsoever.

CLERKS OF COURTS UTTERING FALSE COPIES OR CERTIFICATES OF RECORDS.

By the Forgery Act, 1861 (24 & 25 Vict. c. 98), it is enacted, sect. 28, that—

24 & 25 Vict.
c. 98, s. 28.

"Whosoever being the clerk of any court or other officer having the custody of the records of any court, or being the deputy of any such clerk or officer, shall utter any false copy or certificate of any record, knowing the same to be false, and whosoever other than such clerk, officer or deputy shall sign or certify any copy or certificate of any record as such clerk, officer, or deputy, and whosoever shall forge or fraudulently alter or offer, utter, dispose of or put off, knowing the same to be forged or fraudulently altered, any copy or certificate of any record, or shall offer, utter, dispose of or put off any copy or certificate of any record, having thereon any false or forged name, handwriting or signature, knowing the same to be false or forged, and whosoever shall forge the seal of any court of record or shall forge or fraudulently alter any process of any court other than such courts as in the last preceding section mentioned, or shall serve or enforce any forged process of any court whatsoever, knowing the same to be forged, or shall deliver or cause to be delivered, to any person any paper falsely purporting to be any such process or a copy thereof, or to be any judgment, decree or order of any court of law or equity, or a copy thereof, knowing the same to be false, or shall act or profess to act under any such false process, knowing the same to be false, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding seven years, and not less than [three years, or to be imprisoned for any term not exceeding two years, with or without hard labour]."

Forging
copies or
certificates of
records,
process of
courts not of
records, and
using forged
process.

CHAPTER IX.

COMBINATIONS AMONGST MASTERS AND WORKMEN.

A GREAT variety of statutes formerly existed relative to the combination of workmen (*a*). Those statutes were all repealed in 1824 by the 5 Geo. 4, c. 95, which substituted other provisions in lieu thereof, "for the purpose of protecting the free employment of capital and labour, and for punishing combinations interfering with such freedom by means of violence, threats or intimidation." "The evils resulting in one year from this statute," said Sir W. Erle (*b*), "were sufficient to produce its repeal, and the substitution of 6 Geo. 4, c. 129." That Act, however, was repealed in 1871 (*c*), when the Trade Union Act, 1871 (*d*), was passed. In 1872, a great strike of London gas stokers having taken place, which might have involved London in darkness, and been attended with serious consequences, they were indicted and convicted for conspiracy (*e*). That decision, which is said to have caused great dissatisfaction amongst those principally affected, led amongst other causes to the repeal of the Act of 34 & 35 Viet. c. 32, and to the passing of the Conspiracy and Protection of Property Act, 1875 (38 & 39 Viet. c. 86).

This Act is printed in full in the Appendix with notes

(*a*) The history of the law upon this subject will be found in Stephen's *Hist. of the Criminal Law*, Vol. 3, Ch. XXX, p. 202.

(*b*) In his valuable Memorandum on the Law relating to Trades Unions, presented to the Trades Union Commission, Ch. 2, and printed at the end of the 11th Report, which is dated 9th March, 1869. This memorandum is also published separately.

(*c*) By 34 & 35 Viet. c. 32.

(*d*) 34 & 35 Viet. c. 31, *post*, Appendix.

(*e*) *R. v. Bunn*, 12 Cox, C. C. 316.

of the cases decided upon it. By sect. 7, certain acts, some of which on occasions might amount to a common law nuisance, are declared to be criminal offences, but sect. 3, which refers specially to combinations and conspiracies, has been held (*f*) to have no application to civil actions, but to be confined entirely to criminal proceedings.

In the rest of this chapter it is proposed to deal only with some recent decisions of the Courts in civil actions, in which remedies have been sought for damage suffered in consequence of combinations and conspiracies. Actionable
conspiracies.

From early times an action by a master has lain against a person who has taken or enticed away his servant in breach of the contract of service, and this matter has been already referred to (*g*). But in recent times, as a result of the formation of trade unions and the greater pressure that can be brought to bear upon employers and their workmen by the association of many persons in one common object, the rights of persons suffering from the effects of such associations have been the subject of some important decisions.

One question which seems to be now settled has been the meaning and effect of "malice," where that word has been used in this connection, and the effect of an intention to do harm as constituting part of a cause of action. Malicious
intention.

The *Mogul Steamship Co. v. Macgregor* (*h*) was not a case of master and servant. It was a case where several shipowners combined together with the view of securing a carrying trade exclusively for themselves, and for this purpose they underbid the plaintiffs, who were rival shipowners, and reduced the freights to a certain port so low as to be unremunerative. They also threatened to dismiss certain agents if they loaded the plaintiffs' ships, and offered a rebate on freights to all shippers who shipped

(*f*) *Quinn v. Leatham*, (1901) A. C. 495.

(*g*) See *Lumley v. Gye*, and other cases cited, *ante*. p. 126.

(*h*) *Mogul Steamship Co. v. Macgregor*, (1892) A. C. 25.

*Mogul
Steamship Co.
v. Macgregor.*

only with them to the exclusion of the plaintiffs' ships. The plaintiffs brought an action for the damage which they had suffered through this combination, alleging a conspiracy to injure them. The House of Lords held that no action for a conspiracy lies against persons who act in concert to damage another and do damage him, but who at the same time merely exercise their own rights and who infringe no rights of other people. In giving judgment in the Court of Appeal in the same case, Bowen, L. J., had said, in a passage cited by Lord Halsbury in the House of Lords as a most apt exposition of the law: "Intimidation, obstruction, and molestation are forbidden; so is the intentional procurement of a violation of individual rights, contractual or other, assuming always that there is no just cause for it;" and as instances of such forbidden acts he mentions the impeding or threatening servants or workmen, and inducing persons under personal contracts to break their contracts.

Malicious
intent does not
make action-
able an act
which other-
wise is not
actionable.

In *Allen v. Flood* (i), the effect of a malicious intent on the part of a person who does acts which cause injury to another was again discussed, and it was decided that an act lawful in itself is not converted by a malicious or bad motive into an unlawful act so as to make the doer of it liable to a civil action. These two cases have overruled the dicta of Lord Esher, M. R., in *Temperton v. Russell* (j), to the effect that where injury ensues from an act of persuasion whereby a person is induced to break his contract, the matter is actionable, provided only that the act was malicious, in the sense of being done for the express purpose of injuring another person. *Allen v. Flood* was an action brought by a shipwright, employed in the repair of a ship, against an official of a trade union, who had informed the plaintiff's employers that, if they did not discharge the plaintiff, their workmen had deter-

Allen v. Flood.

(i) *Allen v. Flood*, 1898/ A. C. 1.

(j) *Temperton v. Russell*, (1893) 1 Q. B. 715.

mined to leave off work. In consequence of receiving this information the plaintiff's employers discharged him. The House of Lords held that no cause of action was shown. Many points of law were considered in the case, but the actual decision does not seem to be of the importance which at first was attributed to it. In *Quinn v. Leathem* (k), Lord Halsbury said, in reference to *Allen v. Flood*, that he wished to observe that every judgment in it must be read as applicable to the particular facts proved or assumed to be proved, and that the case is only an authority for what it actually decides. He then went on to say that the hypothesis of fact on which the case was decided was that the defendant had not uttered or carried into effect any threat at all, but had merely informed the plaintiff's employers of what their workmen had resolved to do; and a further element in the decision was that there was no case of conspiracy or even combination.

In 1889, the case of *Kearney v. Lloyd* (l) was decided in Ireland. The plaintiff was the incumbent of a church and his income was partly dependent on the voluntary subscriptions of parishioners to a sustentation fund. Some of the parishioners, with a view of compelling the plaintiff to resign his incumbency, combined together and agreed to abstain from subscribing to the sustentation fund. The plaintiff sued these parishioners, alleging that he had been injured by this conduct on their part, and that he had been compelled to resign his incumbency. Palles, C. B., with whom the rest of the Court agreed, held that the action was not maintainable, because the acts which the defendants had agreed to do, had they been done without pre-concert, would not have involved any civil injury to the plaintiff.

Kearney v. Lloyd.

Combination to injure held not actionable.

This judgment was followed by Darling, J., in *Huttley v. Simmons* (m). In that case the plaintiff was

(k) *Quinn v. Leathem*, (1901) A. C. 495.

(l) *Kearney v. Lloyd*, 26 L. R., Ir. 268. But see p. 494, *post*.

(m) *Huttley v. Simmons*, (1898) 1 Q. B. 181.

*Huttley v.
Simmons.*

a cab-driver and the defendants were members of a trade union. The defendant, Simmons, conspired with other members of the union to induce a certain cab owner, named Young, not to employ the plaintiff nor to permit the plaintiff to hire and drive a cab. He succeeded in inducing Young to do what he wanted, and the jury found that he had so acted in order to injure the plaintiff and to procure an indirect advantage for others for whom he was acting, but not to procure any indirect advantage for himself. The jury assessed the damage done to the plaintiff at 5*l.* Darling, J., held that the action was not maintainable. The report of the case does not state the means employed to induce the cab owner to refuse to have any dealings with the plaintiff; and in *Quinn v. Leatham* (u), Lord Lindley, referring to this case, said that it was difficult to draw any satisfactory conclusion from it, as the most material facts were not stated.

*Temperton v.
Russell.*

In *Temperton v. Russell* (o) the defendants were members of a committee of three trade unions. Acting with the view of injuring the plaintiff, they informed a person named Brentano that his workmen would leave his employ if he continued dealing with the plaintiff. In consequence of this, Brentano broke off the contracts which in the course of his trade he had made with the plaintiff; and for the damage thereby caused to him the plaintiff sued the defendants. The Court of Appeal held that the action was maintainable, and this decision was approved of in *Quinn v. Leatham* (p), though at the same time the House of Lords expressed disapproval of certain dicta of Lord Esher, M. R., on the subject of malice. In this case the defendants had intentionally induced Brentano to break his contract with the plaintiff, and

(u) *Quinn v. Leatham*, (1901) A. C. 495.

(o) *Temperton v. Russell*, (1893) 1 Q. B. 715. The selection of the defendants in this case was remarked upon as peculiar by Lord Macnaghten in *Taff Vale Railway Co. v. Amalgamated Society of Railway Servants*, (1901) A. C. 426, in which case the House of Lords held that a trade union can be sued for a tort.

(p) *Quinn v. Leatham*, (1901) A. C. 495.

having no just cause for so doing, they were liable for the injury which they had thereby done to the plaintiff.

Quinn v. Leathem (q) was a very similar case to *Temper-ton v. Russell*. The defendants, who were officials of a trade union, combined together with the view of compelling the plaintiff, who was a butcher, to employ only union men; and for this purpose they, amongst other things, informed a man named Munce that they had no alternative but to instruct his workmen to leave his service if he received any meat from the plaintiff. In consequence of this, Munce ceased to deal with the plaintiff, who sued the defendants in respect of the damage which he had suffered. The action was brought in Ireland, and at the trial, before Fitzgibbon, J., with a jury, the plaintiff obtained judgment for 200*l.* damages. A new trial motion was dismissed by the majority of the Divisional Court, Pallett, C. B., dissenting, and this decision was affirmed by the Court of Appeal and by the House of Lords. The case was not one like the *Mogul Steamship Co. v. Macgregor* (r). In that case no legal right of the plaintiff was interfered with, nor was any coercion used against him, but what was done was done by the defendants with the object of benefiting their own trade. In *Quinn v. Leathem*, Lord Lindley said that the plaintiff was at liberty to earn his own living, and this involved liberty to deal with other persons who were willing to deal with him. This liberty was a right recognized by law, its correlative being the general duty of every one not to prevent the free exercise of this liberty, except so far as his own liberty of action may justify him in so doing. And again he said: "The defendants were doing a great deal more than exercising their own rights: they were dictating to the plaintiff and his customers and servants what they were to do. The defendants were violating their duty to the plaintiff and his customers and servants, which was to leave them in the undisturbed

*Quinn v.
Leathem.*

Infringement
of a legal
right.

(q) *Quinn v. Leathem*, (1901) A. C. 495.
(r) (1892) A. C. 25.

enjoyment of their liberty of action as already explained. What is the legal justification or excuse for such conduct? None is alleged, and none can be found." In this case there was therefore an infringement by the defendants of a right of the plaintiff, which it seems would have been actionable, even if there had been no combination, and the acts complained of had been done by one defendant only. But opinions were expressed in the House of Lords that a conspiracy, or a combination between several persons to do injury, which actually results in injury, may be actionable in cases where the acts complained of are such that they would not be actionable if done by only one individual (s).

Quære, whether a combination to injure is actionable, where the acts if done by an individual would not be actionable.

(s) See also the judgment of Phillimore, J., in *Boots v. Grundy*, 82 L. T. Rep. 769. In *Keurney v. Lloyd*, *ante*, p. 491, Pallett, C. B., was of a different opinion. In *Allen v. Flood*, (1898) A. C. 1, at p. 124, Lord Herschell, speaking of the legal effect of malice, said that he put aside the case of conspiracy, which is anomalous in more than one respect.

CHAPTER X.

LEGACIES TO SERVANTS.

It is thought convenient to collect into a separate chapter the various decisions upon this subject, as the question, Whether particular individuals are entitled to legacies left to a class of persons as “servants,” frequently arises (*a*); and the answer to it rather depends upon the words of the will and the intention of the testator in each case, than upon the strict legal construction of the contract into which he has entered with the persons claiming the legacy. For it by no means follows that every person with whom a testator had entered into a contract of hiring and service, was an object of his testamentary bounty; although, in many cases, a clue to his intention may be found by ascertaining the exact nature of such contracts. For similar reasons no rule can be laid down which will be applicable to all cases. Each case must depend upon its own particular circumstances. It is, however, of course, necessary that a person claiming to be entitled to a legacy left to each one of a class of persons, should be one of that class to whom the legacy is left—that a person claiming a legacy as a servant should be a servant—otherwise he cannot be entitled to it. It has, therefore, been held that a person who was not obliged to give up his *whole time* to his master, although in some sense he might be called a servant, was yet not entitled to a legacy left to servants.

Who entitled
to legacies as
“servants”

depends on
intention of
the testator.

But servant
must serve
testator *ex-*
clusively;

(*a*) In *Pickwell v. Spencer*, L. R., 7 Ex. 105, a devise to A., with a direction to pay B. 5*l.* a year wages as long as he shall continue to labour on the farm, was held to give A. the fee. In *Jenner v. Turner*, 16 Ch. D. 188, a condition in a will in restraint of marriage with a domestic servant was held good. As to the effect of a promise to make a will in favour of a servant, see *Maddison v. Alderson*, 8 App. Ca. 467.

*Turnshend v.
Windham.*

but need not
live in his
house or be
fed by him.

So, he must
not be subject
to orders of
any one but
testator.

Coachman
supplied to
testator by
job-master,
with carriage
and horses,
is not the
testator's
servant.

*Chilcot v.
Bromley.*

Thus where (*b*) the Duke of Bolton by his will devised "unto such of my servants as shall be living with me at the time of my death one year's wages;" the Lord Keeper said, "stewards of courts, and such who are not obliged to spend their *whole* time with their master, but may also serve any other master, are not servants within the intention of the will, but I will not narrow it to such servants only that lived in the testator's house or had diet from him."

Upon similar principles it has been held that a servant to be entitled to a legacy left to "servants," must not be subject to the orders of any other person than the testator. That is, that a person serving the testator under a contract made by the testator with that person's master, does not come within the class of persons contemplated by the will, although the testator might in some sense be considered his *dominus pro tempore*.

Thus where (*c*) a testator, after bequeathing legacies to two of his servants by name, if in his service at the time of his decease, gave and bequeathed unto all his "other servants" who should be living with him at the time of his decease 50*l.* each, and 10*l.* each for mourning; and by a codicil revoked the legacies of 50*l.* and 10*l.* for mourning to his other servants not particularly named, and made the following bequest: "To all my other servants in lieu thereof the sum of 500*l.* each, and 20*l.* each for mourning:" Sir W. Grant, M. R., held that a coachman supplied, in the course of business, with a carriage and horses hired by the year from a job-master, was not entitled to the legacy as a servant within the intent and meaning of the will. The coachman, in that case, did not board or lodge in the testator's house, but received from him 12*s.* a week as board wages, and a livery with the other male servants, the job-master also paying him 9*s.* a week; but the coachman served no

(*b*) *Turnshend v. Windham*, 2 Vern. 546.

(*c*) *Chilcot v. Bromley*, 12 Ves. 114; see *Quarman v. Burnett*, 6 M. & W. 499, *ante*, p. 315.

other person than the testator, and was returned by him as his coachman under the Act imposing a duty on male servants. However, Sir W. Grant observed, truly, that the coachman was merely the *subject* of the contract, which was with the job-master, not a *party* to it.

And in *Howard v. Wilson* (*d*), in a suit of subtraction of legacy, a coachman, a married man, *originally hired by*, and who had lived five years with a testatrix, residing over her stables in town, occasionally accompanying her into the country, where he lived in the house, though, like all her servants, on board wages, waiting sometimes at table, and *remaining with her though she changed her job-master*, was held entitled under a bequest "to each of my servants living with me at the time of my death 10*l.*;" *although* the testatrix paid a *job-master* 200*l.* a year, out of which he *paid* the coachman *wages* and board wages (except 3*s.* a week extra in the country), and found him in liveries; Sir J. Nicholl distinguishing the case from *Chilcot v. Bromley* (*e*).

Aliter, coachman hired by testator, although job-master paid his wages and found livery.

Howard v. Wilson.

The late Earl of Leicester by his will (*f*) gave

"One year's wages in advance to each of my servants in my service at my death, who shall have lived with me five years or upwards, and one-half of a year's wages to each of my other servants in my service at my death; the said several legacies to my said servants to be in addition to whatever sum may be due to them respectively for wages up to my death; and also an additional sum of 10*l.* to each of my upper servants and of 5*l.* to each of my under servants respectively for mourning. And I direct that each of the said legacies expressly given for mourning, and each of the said legacies to my said servants shall be paid within one calendar month next after my death."

Bulling v. Ellice.

Farm bailiff held to be a servant.

Knight Bruce, V.-C., held that a farm bailiff, who had lived with the Earl twenty-eight years, at 350*l.* a year, living on the home farm within the park, rent free, the Earl paying all rates and taxes, and who was allowed keep for a cow and a horse, and to take pupils to instruct in agriculture, was a servant within the meaning of the

(*d*) 4 Hagg. 107.

(*e*) *Ubi supra*.

(*f*) 9 Jurist, 936.

will, and was entitled to his year's wages of 350*l.* (*g*), and interest at four per cent. from one month from the testator's decease, the time when the legacy was directed by the will to be paid.

Ogle v. Morgan.
"Servants on domestic establishment" only applies to indoor servants.

A bequest to each "servant in my domestic establishment" was held (*h*) by Lord Truro not to cover the case of a head gardener at weekly wages living in a cottage belonging to the testator in an adjoining village, on the ground that the testator had in view the distinction between *indoor* and *outdoor* servants when he used the term "servants in my domestic establishment."

Servant must be a *yearly* servant.

Booth v. Dean.

Servant at *weekly* wages not entitled to legacy of *year's* wages.

Moreover, to entitle a servant to a legacy of a year's wages it has been held that he must have been a *yearly* servant, and a servant who has been paid *weekly* wages is not entitled. Thus, where a will contained the following words, "I give to each of my servants *one year's* wages over and above what may be due to them at the time of my decease," a question was made whether a person who had worked in the testator's garden, under his gardener, for several years, at *weekly wages*, and a boy who had served the testator for some time as a cowboy, at *weekly wages*, and neither of whom resided with or formed part of the testator's family, were to be considered as entitled under the will to a year's wages; but Sir J. Leach, M. R., was of opinion that these persons were not servants in the sense in which the testator had used the expression. In speaking of a year's wages the testator plainly used that expression with reference to family servants usually hired by the year (*i*).

Blackwell v. Pennant.
Nor gardener at *weekly* wages.

And so where (*k*) a testator by his will gave "to each of his servants living with him at his decease, and who had lived with him three years," a legacy of one year's wages, Sir G. Turner, V.-C., held, that a head gardener

(*g*) The 10*l.* for mourning had been paid.

(*h*) *Ogle v. Morgan*, 1 De G. M. & G. 359; reversing the decision of Knight Bruce, V.-C., 19 L. J., Ch. 531; *Faughan v. Booth*, 16 Jur. 808.

(*i*) *Booth v. Dean*, 1 Myl. & K. 560. But see *Thrupp v. Collett*, *post*, p. 499.

(*k*) *Blackwell v. Pennant*, 9 Haro, 551.

who at the time of the death of the testator lived in a cottage of the testator in the grounds, free of rent, and was employed at 17*s.* a week, was not entitled to the legacy; as although clearly a servant, and not to be excluded on the ground that he was not living in the same house with the testator, yet the bequest only applied to servants hired *by the year*.

Upon the authority of these cases a similar decision was made in Ireland, in a case (l) in which a testator bequeathed “unto each and every of the servants, male and female, who shall respectively have been living in my service for the space of six calendar months immediately previous to my decease, the amount of one year’s standing wages over and above any yearly salary or wages I may owe them respectively at my decease.” A person who stated that he was “a servant in the employment of the testator as a gardener for a period of nearly eleven years prior to his decease, and was hired by the testator as such servant on the 17th of March, 1841, at wages or remuneration equivalent to the sum of 52*l.* a year, payable by a weekly allowance of 12*s.* 6*d.* in money, and by means of a house rent free, and a certain allowance of milk and coals yearly; all of which money and other wages and allowances were equivalent in value to the said yearly salary of 52*l.* a year,” was held by Brady, L. C., not entitled to any legacy under the above bequest, as the terms of the bequest made it essential that the servant should have been engaged on a yearly hiring and wages, and it could not be inferred from the petitioner’s statement that there was a yearly hiring, or a hiring at yearly wages. But he (the L. C.) thought it certainly not of any importance that the petitioner did not live in the house, nor that his wages were paid weekly or at irregular intervals, if they were in truth yearly wages.

However, where (m) a testator, among other pecuniary

Breslin v.
Waldron.

Thrupp v.
Collett

(l) *Breslin v. Waldron*, 4 Ir. Ch., R. 323 (1855).

(m) *Thrupp v. Collett*, 26 Beav. 147.

*Thrupp v.
Collett.*

legacies, gave to his executors the sum of 1,000*l.* to be equally divided between all the servants in his service at the time of his decease (except as in his will mentioned), it was held by Sir J. Romilly, M. R., that a head gardener and under gardener at weekly wages, who lived at their own houses, adjacent to that of the testator, and were occupied in their employment of gardeners the whole of the working days, and occasionally on Sundays, to feed the cattle and attend to the garden, and had no employment from any other person during their engagement with the testator, were servants within the meaning of the will.

"The case of *Townshend v. Windham*" (*n*), said the M. R., "lays down that the mere fact of responsibility is not a ground upon which the Court ought to proceed, and it would appear to me a very strange decision to hold that a person is not a servant because he does not live in the house but in a cottage belonging to his master. It is a common thing to pay gardeners by the week. The gardener was in the employment of the testator for upwards of a year, and during the whole of that time was engaged in the management of the garden. I can see no definition of 'servants' which would exclude the gardener. The same observation applies to the under gardener, and he also is entitled as one of the servants of the testator."

Service must
continue to
death of
testator.

*Jones v.
Henley.*

The servant also must, generally speaking, continue in the service of the testator to the time of his death.

Sir Robert Henley, by will (*o*), gave 100*l.* apiece to all his servants. The Court declared that none but such as were his servants before the making of the will (*p*), and did so continue to be servants to him until the time of his death, could have any pretence to the legacy: and such only as were his menial servants, and lived all along in the house with him from the date of the will until his death, and no others.

(*n*) 2 Vern, 546, *supra*, p. 496.

(*o*) *Jones v. Henley*, 2 Chan. Rep. 361. In *Re Marcus*, 56 L. J., Ch. 830, North, J., said he thought there must have been something more than appears in the report of *Jones v. Henley*, which led the judge to come to the conclusion he did in that case.

(*p*) The question does not appear to have been raised in any subsequent cases, whether it was necessary that the servant should have been in the service of the testator at the date of his will, as well as at the time of his death. See *Parker v. Marchant*, *infra*.

But where (q) a testator bequeathed a legacy to Jane H., "if in his service at the time of his decease," and it appeared that Jane H. had quitted his house a few days before his death, Lord Eldon held, that parol evidence was admissible to show that though she had quitted his *house*, she continued and was considered by him as still in his *service*: and upon that evidence the legacy was established.

Herbert v. Reid.
Quitting house but not service.

And in a subsequent case (r), where a testator had several servants, and by a codicil to his will bequeathed to some of them by name legacies of 1,000*l.* each, and then gave "to the other servants 500*l.* each;" it was held by Lord Lyndhurst, L. C. (affirming the decision of Knight Bruce, V.-C.), that A. R., a female servant who was in the testator's service at the date of the codicil, though for ten weeks only, and quitted it three years and a half before his death, was entitled to a legacy of 500*l.*, considering that the case of *Jones v. Henley* (s) did not apply. And his lordship said—

Parker v. Marchant.
Servant who lived with testator at date of will but had left long before his death, held entitled, under bequest to "other servants."

"The testator had several servants, some of whom had lived in his service for many years, as he states in his codicil. The others lived with him for a shorter period of time. He distinguishes between them. He gives to three of them by name, who had lived in his service for many years, 1,000*l.* each, and he then expresses himself thus, 'to the other servants 500*l.* each.' What is meant by the other servants? The rest. After taking out of the whole class the three individuals who are named, Mrs. D. and the two others, to whom he gives 1,000*l.* each, he then gives 500*l.* to the remainder. It appears to me as if he had named them, and as he annexes no condition to the gift, I am of opinion that A. R. is entitled, on the construction of this codicil, to the legacy of 500*l.*"

Under a bequest, by which the testator directed that "my office and warehouse employés, such as clerks and workmen, shall have to receive six months' full salary," it was held (t) that the persons to take were the employés in the service of the testator at the time of his death.

Re Marcus.

(q) *Herbert v. Reid*, 16 Ves. 481.

(r) *Parker v. Marchant*, 6 Jurist, 292; 7 Jur. 457 (the point in the text is not noticed in the report, 2 Cr. & Ph.).

(s) *Ubi supra*.

(t) *Re Marcus*, 56 L. J., Ch. 830.

But where a testator directed his trustees "to pay to each man who shall have been in my employ over ten years the sum of 10*l.* for each year's service beyond the said ten years," it was held (*u*) that a man who had been in the testator's employment for fifteen years, but had left his employment before the date of the will, and was not in his employment at the time of his death, was entitled to a legacy of 50*l.*

Servant
wrongfully
discharged
not entitled:

Darlow v.
Edwards.

Even a servant wrongfully discharged is not entitled to a legacy left by a will, which requires that the legatee shall be "in the service" to be entitled to it. And therefore, where a man left his landed estate to his son and charged it with the payment to his faithful servant S., of an annuity of 12*l.* "provided she shall be in my service at the time of my decease;" and two days before his death discharged her without sufficient ground, paying her wages; it was held by the Exchequer Chamber that although she might perhaps recover damages in an action for wrongful discharge, yet she was not in the service of the testator at the time of his decease, and therefore not entitled to the annuity (*r*).

nor one who
has volunt-
arily left.

Vence v.
Marriott.

And a similar decision was made where a servant voluntarily left the house of a lunatic master during his lifetime, receiving wages up to the end of his year, 16th October, though the testator died on the 8th October (*u*).

Promissory
notes left by
master pay-
able to his
servant, but
not delivered
in master's
lifetime void.

Gough v.
Pindon.

Where a man on his death left among his papers two letters sealed and directed "for Sarah Gough, my late servant," one of which contained a promissory note for 400*l.*, and the letter stated that it was "in consideration of her long and faithful services" (she having been his housekeeper, but having left on having a child by him), and that his executors would pay her the amount of the

(*u*) *Re Sharland, Kemp v. Rozey*, (1896) 1 Ch. 517.

(*r*) *Darlow v. Edwards*, 1 H. & C. 547.

(*u*) *Re Serres' Estate, Vence v. Marriott*, 31 L. J., Ch. 519. In *Re Hartley's Trusts*, 47 L. J., Ch. 610, a servant was held not entitled to a legacy left to those in the service of the testatrix, because she had been dismissed in consequence of an order in lunacy by which the Court, shortly before the death of the testatrix, had ordered all her property to be sold so that her establishment had been necessarily broken up.

note; and the other letter was similarly addressed, and inclosed a note for 200*l.*, and in the letter there was the following passage:—"In addition to any sum I owe you, I enclose you 200*l.* as a mark of my respect," and there was also a recommendation that the money should be invested for the benefit of the child; it was held that the notes were void as notes for want of delivery in the maker's lifetime, and therefore the executors were not liable upon them; and they were also void as testamentary dispositions, for non-compliance with the Wills Act (*x*).

And a similar decision was made by Kindersley, V.-C., *Trimmer v. Danby*, in a case (*y*) in which a housekeeper who had been forty years in the testator's service, and to whom an annuity was bequeathed by his will, claimed some Austrian bonds which were in a box belonging to the testator, of which, and the key, she had the custody. The bonds were rolled up in packets, and one containing ten had this indorsement, signed by the testator, "The first five numbers of the Austrian Bonds belong to and are Hannah Danby's property. Signed, J. M. W. Turner." It was held that, as there had been no actual transfer or delivery of the five bonds, they still formed part of the testator's assets, for although H. D. had the *custody* she had not the *possession* of the bonds.

By his will dated November, 1876, B., a testator who died in July, 1883, bequeathed "to each of my servants who shall at my death have been in my service twelve calendar months or longer, one year's wages in addition to anything owing by me, and to my gardener, P. G., 300*l.* in addition." In August, 1880, P. G., who had been in testator's service thirty-three years, left the service, and on leaving the testator made him a present of 100*l.* It was held by Kay, J., that, as P. G. was not in the service at the death of the testator, he had

Servant who had left service not entitled to legacy "in addition" to wages.

Benyon v. Grieve.

(*x*) *Gough v. Findon*, 7 Exc. 48; see *Hulse v. Hulse*, 17 C. B. 711, 721.
(*y*) *Trimmer v. Danby*, 25 L. J., Ch. 424.

not fulfilled the condition, and was not entitled to the 300*l.* (z).

How far
legacy is a
satisfaction of
debt for
wages.

When a legacy is left by a master to his servant, it will, sometimes, be considered as a satisfaction, either in the whole or in part, of any wages due at the time of the master's death, unless a contrary intention appear from the master's will (a). Courts of equity, however, are inclined to infer a contrary intention from slight circumstances. Thus, in *Mathews v. Mathews* (b), Sir Thomas Clarke, M. R., said he remembered a case, before Lord Hardwicke, where an old lady, indebted to a servant for wages, by will gave ten times as much as she owed or was likely to owe; yet because the legacy was made payable *a month after* her own death, the Court laid hold of that circumstance to take it out of the general rule (c).

Mathews v.
Mathews.

Direction by
testator to
employ
particular
servant or
agent.

Germane to the subject we have been treating of, and therefore proper to be introduced in this place, are the cases in which the question has arisen whether a direction or injunction in a will to employ a particular steward or agent imposes on the devisee an obligation in the nature of a trust in favour of the person so named (d). This question arose in the case of *Shaw v. Lawless* (e). There the testator, after devising his estates, charged with certain annuities, to his friend Shaw (then aged twenty years) for life, with remainders over in strict settlement,

Shaw v.
Lawless.

(z) *Re Benyon, Benyon v. Griere*, 53 L. J., Ch. 1165.

(a) See *Le Sage v. Coussmaker*, 1 Esp. 188.

(b) 2 Ves. sen. 636; see also *Chancey's Case*, 1 P. Wms. 408. However, in *Richardson v. Greese*, 3 Atk. 69, Lord Hardwicke said that legacies to servants had never been held to be in satisfaction of debts. See *Smith v. Smith*, 31 L. J., Ch. 91. In France legacies to servants are not considered as satisfaction for wages, Cod. Civ. liv. 3, tit. 2, sect. 6, 1023.

(c) In *Roch v. Collen*, 6 Hare, 531, an annuity of 20*l.* left to a servant by a codicil was held to be cumulative upon and not in substitution of a similar annuity left by the will. Where a testatrix directed her executors to purchase an annuity of 50*l.* a year in government securities for her servant M., it was held that the annuity was perpetual and not for life only; *Ross v. Borer*, 31 L. J., Ch. 709. And a legacy to "servant and friend A." and a year's wages to all servants, was held cumulative. *Wilson v. O'Leary*, L. R., 7 Ch. 448.

(d) See generally on this subject, *Knight v. Knight*, 3 Beav. 148; *Greene v. Marsden*, 1 Drew. 646. In *Thornycroft v. Lashmar*, 31 L. J., P. M. & A. 150, an appointment by letter of an agent and collector was held not testamentary.

(e) 5 Cl. & F. 129.

and directing the residue of his personal estate to be invested in the purchase of other real estates, to be settled in like manner, and after bequeathing to his friend and agent, Lawless, 100*l.* as a token of esteem, and after directing his executors to pay to his agent 150*l.*, to be distributed among the poor on his estates, declared it to be his "particular desire that his executors, whilst acting in the management of all or any of his affairs under his will, as also his friend Shaw, when he should enter into the receipt of the rents of his estates, should continue Lawless in the receipt and management thereof, and likewise should employ and retain him in the receipt, agency and management of lands to be purchased and settled in pursuance of the will at the usual fees allowed to agents, he having acted for the testator since he became possessed of the estates fully to his satisfaction." The testator also bequeathed to his friend and agent, Lawless, 150*l.* to purchase a monumental tablet. Soon after the testator's decease, Shaw dismissed Lawless from his office as land agent, but without impeaching his character or capacity. Lawless filed a bill in Chancery against Shaw, claiming to be reinstated, which was dismissed by Lord Plunket, and his decree (though upon a rehearing reversed by his successor, Lord St. Leonards) was afterwards affirmed in the House of Lords. In delivering judgment in the House of Lords, Lord Cottenham, C., after stating that all cases upon a subject like this must depend upon the testator's intention, and that Lawless was only agent to the testator in his lifetime *during his pleasure*, and that by the terms of the will the testator desired he should continue in the agency, and that the natural presumption was that the testator wished him to continue upon the *same terms*, and showing to what absurd consequences the upholding Lawless's claim would lead, said,—

*Shaw v.
Lawless.*

"There is, it is true, a great variety of cases in which the expression of a wish has been held to create a trust : but the rule of construction in these cases is that there should be certainty in the object and in the

Shaw v.
Lawless.

subject of a trust so created ; that the expressions in the will should not leave the matter in a doubtful ambiguity. *Cary v. Cary* (*f*) has been referred to. There Lord Redesdale expressed the rule in these words, 'When a testator, having in his power to dispose of property, expresses a desire as to the disposition of the property, and the objects to which he refers are certain, the desire so expressed amounts to a command, and if he shows his desire, he in fact expresses his intention, provided the objects to which he refers are so defined that a Court can act upon the desire so expressed.' In *Foley v. Parry* (*g*) the Court held that a desire that a devisee in remainder should be educated and maintained from the income of the devised property created a trust in his favour. There everything concurred to show that such was the intention of the testator. In *Hibbert v. Hibbert* (*h*) a trust was held to be created as to a West Indian estate, and H., the person in whose favour the desire was made, was appointed consignee. But there the words were clear and express in his favour, though the estate to which they applied appeared doubtful. In *Tibbitts v. Tibbitts* (*i*) there was no doubt as to the subject-matter, but still that case carried the doctrine of creation of trusts further than any which had preceded it, though, as it seems to me, not so far as the decree (of Lord St. Leonards) in the present case has carried it. It is true that all the Court requires is that the subject and object shall be defined and certain. Then what is the subject in the present case? It is the right to be employed in the receipt of the rents, and the agency and management, of the land of another person upon the usual fees. What is the necessary effect of this alleged right? It goes to exclude Shaw from the management of his own estate, or from the receipt of the rents themselves. Then this question arises: Suppose that he parts with the estate, would it, in the hands of a purchaser, be subject to the same liability to this claim of agency on the part of Lawless? Was it the desire or the wish of the testator that it should be so? or did he merely wish that his devisee should employ a man whose conduct had given satisfaction to himself? Some cases of difficulties of another kind were put in the course of the argument. It was asked, among other things, whether, if a testator should say that he desired his son to be educated at a particular school that would create a trust in favour of the schoolmaster? That would certainly be a matter for the advantage of the schoolmaster, but it could not be contended that he would have a right to enforce the performance of this desire of the testator. It would be an expression of desire made for the benefit, not of the schoolmaster, but of the scholar. Having examined all the cases and quite satisfied myself that there is not a case which comes at all near the present, I mean indeed that all are against the construction contended for by the respondent, I am of opinion that the judgment pronounced by Lord Plunket was correct, and that the decree of Lord Chancellor Sugden must so far be reversed."

(*f*) 2 Sch. & Lef. 173.

(*g*) 5 Sim. 138, affirmed on appeal, 2 M. & K. 138.

(*h*) 3 Mer. 681.

(*i*) 19 Ves. 656.

In a previous case (*k*) in which a testator devised his estates to trustees upon trust to let the same, and apply the rents in paying off certain incumbrances, and appointed A. to be *auditor* of the accounts during the execution of the trusts, and directed the trustees to pay him the usual annual remuneration; Sir L. Shadwell, V.-C., held that the trustees were not justified in removing A. from the office, there being no imputation on his conduct, for that he had as much right to be auditor as any one of the devisees had to the estates.

Auditor.
Williams v.
Corbet.

Where a testator (*l*), after leaving some legacies, proceeded thus, "I trust to the liberality of my successors to reward any others of my old servants and tenants according to their deserts," Lord Langdale, M.R., thought he could not be understood to have intended to create an imperative trust.

Knight v.
Knight.

(*k*) *Williams v. Corbet*, 8 Sim. 349.

(*l*) *Knight v. Knight*, 3 Beav. 148.

APPENDIX.

THE FRAUDS BY WORKMEN ACT, 1748.

22 GEO. 2, c. 27.

An Act for the more effectual preventing of Frauds and Abuses committed by Persons employed in the Manufacture of Habs, and in the Woollen, Linnen, Fustian, Cotton, Iron, Leather, Furr, Hemp, Flax, Mohair and Silk (a) Manufactures; and for preventing unlawful Combinations of Journeymen Dyers and Journeymen Holpressers, and of all Persons employed in the said several Manufactures; and for the better Payment of their Wages.

[The preamble recites an Act of 13 Geo. 2, c. 8. which was repealed by the Master and Servant Act, 1889 (52 & 53 Vict. c. 24).]

Be it enacted by (&c., &c.), that if any person or persons whatsoever who shall be hired or employed to make any felt or hat, or to prepare or work up any woollen, linnen, fustian, cotton, iron, leather, furr, hemp, flax, mohair, or silk manufactures, or any manufactures made up of wool, furr, hemp, flax, cotton, mohair, or silk, or of any of the said materials mixed one with another, shall, from and after the 24th day of June, 1749, purloin, imbezil, secrete, sell, pawn, exchange, or otherwise unlawfully dispose of any of the materials with which he, she or they shall be respectively entrusted, whether the same or any part thereof be or be not first wrought, made up, manufactured or converted into merchantable wares (*b*), or shall reel false (*c*) or short yarn, and shall be thereof lawfully convicted by the oath or (if the owner thereof be of the people called Quakers) solemn affirmation of the owner of such goods or materials, or by the oath or affirmation of any other credible witness or witnesses, or by the confession of the person or persons charged with such offence, before any one (*d*) or more justice or justices of the peace of the county, riding, division, city, liberty, town or place where such offence shall be committed, or where the person or persons so charged

Persons employed in the manufactures herein described, being convicted of imbezzling, &c. any of the materials,

or of reeling false or short yarn,

(a) Repealed as to woollen, linen, cotton, flax, mohair, and silk manufactures, 6 & 7 Vict. c. 40, *post*.

(b) See 17 Geo. 3. c. 56, *post*, and sect. 16, as to tools, &c.

(c) This punishment for reeling false or short yarn having been found too severe was repealed, 14 Geo. 3. c. 44, and a punishment by penalty substituted, but that Act was repealed by the Master and Servant Act, 1889.

(d) Two, 17 Geo. 3, c. 56, s. 2, *post*.

to be committed:

Persons convicted of buying or receiving any of the materials from the workmen without consent of their employers.

to forfeit for the first offence 20*l*.

Justices empowered to grant a warrant to search the houses, &c., of persons convicted of purloining, &c., any of the materials, &c.,

the persons from whose houses such materials were taken, proving their property therein, to have them restored.

shall reside or inhabit (which oath or affirmation the said justice or justices is and are hereby empowered and required to administer), it shall and may be lawful to and for the said justice or justices, by warrant under his or their hand and seal or hands and seals, to commit the person or persons so convicted to the house of correction, or other public prison of such county, riding, division, city, liberty, town or place (*e*).

2. And if any person or persons shall buy, receive, accept or take, by way of gift, pawn, pledge, sale or exchange, or in any other manner whatsoever, of or from any person or persons hired or employed to make any felt or hat, or to prepare or work up the woollen, linnen, fustian, cotton, iron, leather, furr, hemp, flax, mohair or silk manufactures, or any manufactures made up of wooll, furr, hemp, flax, cotton, mohair or silk, or of any of the said materials mixed one with another, any thrums or ends of yarn, or any other materials of wooll, furr, hemp, flax, cotton or iron, or any leather, mohair or silk, whether the same or any part thereof be or be not first wrought, made up or manufactured, knowing the person or persons of whom he, she or they so buy, receive, accept or take the said materials to be so hired or employed as aforesaid, and not having first obtained the consent of the person or persons so hiring or employing him, her or them, who shall offer to sell, pawn, pledge, exchange or otherwise dispose of the said materials, or shall buy, receive, accept or take in any manner whatsoever, of or from any other person or persons whomsoever, any of the said materials, whether the same be or be not first wrought, made up or manufactured, knowing the same to be so purloined or imbezzilled, then and in every such case the person or persons so buying, receiving, accepting or taking any such materials, being thereof lawfully convicted in manner before prescribed by this Act for the conviction of persons purloining or imbezzilling the said materials, shall for the first offence forfeit the sum of twenty pounds (*f*).

[*Sec. 3 was repealed by 30 & 31 Vict. c. 59.*]

4. And if any person or persons shall be charged with and afterwards convicted (*g*) of purloining or imbezzilling any of the aforesaid materials, or of buying or receiving the same in manner before described, it shall and may be lawful to and for the justice or justices of the peace before whom such conviction shall be had to issue a warrant under his or their hand and seal, or hands and seals, directed to any person or persons, empowering him or them, in the presence of a constable or headborough, and in the day-time, to enter into and search the houses, out-houses, shops, cellars, vaults and other places belonging to the person or persons so convicted as aforesaid; and if upon any such search or searches there shall be found any thrums or ends of yarn, or any other materials of wooll, furr, hemp, flax, cotton, iron, leather, mohair or silk, it shall and may be lawful to and for the person or persons empowered to make such search or searches as aforesaid to bring such materials before the said justice or justices, to be by him or them detained and kept in safe custody; and if within the space of twenty-four days next after such thrums or ends of yarn, or other materials, shall be so taken and detained, it shall be made appear to the satisfaction of the said justice or justices that the person or persons from whose houses, out-houses, shops, cellars, vaults or other places as aforesaid, the said materials shall be so taken and detained, is or are the lawful owner or owners thereof, and came to the possession of the same in an honest and lawful manner, then all such thrums or ends of yarn, or other materials, so taken and kept as aforesaid, shall be restored to the person or persons

(*e*) The remainder of this section was repealed by 17 & 18 Vict. c. 43.

(*f*) See 17 Geo. 3, c. 56, s. 3, *post*; and sect. 16, as to tools, &c. The rest of this section was repealed by 17 & 18 Vict. c. 43.

(*g*) See 17 Geo. 3, c. 56, s. 10, *post*, as to search before conviction, and in premises not belonging to person convicted.

out of whose custody or possession the same shall have been so taken ; but in case it shall not be made appear within the time before limited, to the satisfaction of the said justice or justices, that the person or persons convicted as aforesaid is or are the lawful owner or owners of the said materials so taken and detained as aforesaid, then and in every such case the said materials shall be deemed and adjudged to be purloined or imbezzled ; and it shall and may be lawful to and for the said justice or justices to direct all such thrums or ends of yarn, or other materials, to be publickly sold, and the money arising by such sale (the charges of such sale being first deducted) to be equally distributed amongst the poor of the parish or place where the person or persons so convicted shall reside or inhabit.

5. Provided always, that the said justice or justices shall, within three days after such materials shall be brought to him or them as aforesaid, give notice thereof in writing under his or their hand and seal, or hands and seals, to the person or persons convicted as aforesaid, appointing in such notice a time and place for his, her or their attending in order to make out and prove his, her or their property in such materials so taken and detained as aforesaid ; which time so to be appointed shall be within twenty-one days and not less than eighteen days after such notice given ; and if the person or persons so convicted shall be detained in any house of correction or other prison as aforesaid, the said justice or justices shall also cause a copy of the said notice, attested under his or their hand and seal or hands and seals, to be delivered to the master or keeper of such house of correction or other prison, which master or keeper is hereby required to bring or cause to be brought before such justice or justices the person or persons named in such notice, at the time and place therein specified, if the person or persons named in such notice be then in the custody of such master or keeper ; and if any such master or keeper shall neglect or refuse so to do, such master or keeper shall, for every such neglect or refusal, forfeit to the person or persons respectively named in such notice the full value of the materials so taken, detained and sold, to be recovered by distress and sale of the goods and chattels of such master or keeper, by warrant under the hand and seal or hands and seals of the justice or justices signing such notice, in case the said forfeiture shall not be immediately paid.

6. Provided also, that if any person shall think himself or herself aggrieved by the judgment or order of the said justice or justices relating to the sale or disposal of the said materials so found and detained as aforesaid, such person shall have liberty to appeal against the judgment or order of the said justice or justices to the justices of the peace in the general or quarter sessions of the peace which shall be held for the same county, riding, division, city, liberty or town corporate, next after such judgment or order shall be given or made, and that in the meantime the sale and disposal of such materials shall be postponed (*i*).

7. And if any person or persons entrusted with any of the materials hereinbefore mentioned, in order to prepare, work up or manufacture the same, shall not use all such materials in the preparing, working up or manufacturing of the same, and shall neglect or delay for the space of twenty-one days (*k*) after such materials shall be prepared, worked up or manufactured, to return (if required by the owner or owners of such materials so to do) so much of the said materials as shall not be used as aforesaid to the person or persons entrusting him, her or them therewith, such neglect or delay shall be deemed and adjudged to be an imbezzling or purloining of such materials ; and the person or persons so neglecting or delaying, being thereof convicted in manner before prescribed for the conviction of offenders against this Act, shall suffer the like punishment (*k*)

if not, they are to be sold, and the money distributed among the poor.

Justices to give notice to the convict of the materials brought to them in order to prove his property therein, &c.

Penalty on the keeper of the prison not bringing the prisoner.

Persons aggrieved may appeal.

Penalty on workmen not returning the remains of the materials within twenty-one days after the work is made up.

(*i*) The remainder of this section was repealed by 47 & 48 Vict. c. 43.

(*k*) See 17 Geo. 3, c. 56, s. 7, *post*.

as persons convicted of imbezillling or purloining any of the materials hereinbefore mentioned are by this Act rendered subject and liable to.

[*Sec. 8 was repealed by 47 & 48 Vict. c. 43; sect. 9 was repealed by 17 Geo. 3, c. 56, s. 8, post; sects. 10 & 11 were repealed by 31 & 35 Vict. c. 116.*]

12. *Recital of several clauses of an Act of 12 Geo. 1, c. 34, which Act was repealed by the Master and Servant Act, 1889, 52 & 53 Vict. c. 24.*]

The provisions and regulations in the clauses of the recited Act to extend to persons employed in the manufactures herein enumerated.

Penalties and forfeitures to be inflicted and levied as in the said Act is directed.

Be it therefore enacted by the authority aforesaid, that the said several before recited clauses in the said Act made in 12th Geo. 1, and all the provisions, regulations, pains, penalties and forfeitures therein contained, shall, from and after the said 24th day of June, 1749, extend, and be construed, deemed and adjudged, to extend to journeymen dyers, journeymen hot pressers, and all other persons whatsoever employed in or about any of the woollen manufactures of this kingdom, and also to journeymen, servants, workmen and labourers, and all other persons whatsoever employed in the making of felt or hats, or in or about any of the manufactures of silk, mohair, furr, hemp, flax, linnen, cotton, fustian, iron or leather, or in or about any manufactures made up of wooll, furr, hemp, flax, cotton, mohair or silk, or of any of the said materials mixed one with another, in as full and ample manner as the said provisions, regulations, pains, penalties and forfeitures, are by the said last mentioned Act declared to extend to the several and respective persons therein named: and the pains, penalties and forfeitures which shall be incurred by reason of any offence committed against the said last mentioned Act, by any person or persons employed or concerned in or about any of the said manufactures herein before enumerated, shall be inflicted, levied and recovered in the same manner as the pains, penalties and forfeitures contained in the said last in part recited Act are directed to be inflicted, levied and recovered upon and against the several and respective persons therein mentioned (*l*).

THE FRAUDS BY WORKMEN ACT, 1777.

17 GEO. 3, c. 56.

An Act for amending and rendering more effectual the several Laws now in being, for the more effectual preventing of Frauds and Abuses by persons employed in the Manufacture of Hats, and in the Woollen, Linen, Fustian, Cotton, Iron, Leather, Fur, Hemp, Flax, Mohair, and Silk (m) Manufactures: and also for making Provisions to prevent Frauds by Journeymen Dyers.

[*The preamble recites sect. 1 of the Frauds by Workmen Act, 1748 (22 Geo. 2, c. 27), ante, p. 509.*]

So much of the said Act as prescribes the punishment to be inflicted for

Be it therefore enacted, by (Ac., &c.) that from and after the 1st day of July, 1777, so much of the said recited Act as prescribes what the punishment shall be in any of the cases before mentioned, or before whom

(*l*) So much of this section as relates to combinations of workmen, &c., was repealed by 6 Geo. 4, c. 129; so much as created a felony was repealed by 9 Geo. 4, c. 31; and so much as relates to the payment of wages in goods, by 1 & 2 Will. 4, c. 36. (See 1 & 2 Will. 4, c. 37, *post*, as to wages.) So much as applies to any enactment repealed by 47 & 48 Vict. c. 43, was repealed by that Act; and so much as applies to any enactment repealed by the Truck Amendment Act, 1887 (50 & 51 Vict. c. 46) was repealed by that Act.

(*m*) Repealed as to woollen, linen, cotton, flax, mohair and silk manufactures, 6 & 7 Vict. c. 40, *post*; and see *R. v. Button*, 11 Q. B. 929, 941.

such conviction shall be had, whether for a first offence or a second or any subsequent offence, shall be repealed; and instead of inflicting the punishment so directed the justices of the peace before whom the conviction shall be shall commit the person convicted to the house of correction or other public prison, there to be kept to hard labour, in the case of a first offence, for any time not less than fourteen days nor more than three months, and in the case of a second or any subsequent offence, for any time not less than three months nor more than six months, and may likewise, for the first or for any subsequent offence, order the person convicted to be once publicly whipped, if such additional punishment shall by the said justice or justices be deemed proper.

2. Provided always, that no person or persons who shall be charged with any offence or offences against the said recited Act of 22 Geo. 2, shall be liable to be convicted unless before two or more justices of the peace for the county, riding, division, city, liberty, town or place where the offence shall be committed; anything contained in the said recited Act to the contrary hereof notwithstanding.

3. [*Recital of sect. 2 of 22 Geo. 2, c. 27, ante, p. 510.*] And whereas it is thought necessary to increase the pecuniary penalties directed by the said recited Act for the said offences last mentioned, and to vary the application of the said penalties for the same, and further to change the consequences of non-payment; *be it therefore further enacted*, that from and after the said 1st day of July, 1777, so much of the said recited Act of 22 Geo. 2 as enacts what the penalty or punishment shall be for such buying, receiving, accepting, or taking by way of gift, pawn, pledge, sale or exchange, or in any other manner as is described by the said Act in the terms aforesaid, and how such penalty shall be applied, and what punishment shall be inflicted in case of non-payment, shall be repealed; and instead thereof the penalty for the first offence shall be any sum not more than forty pounds (x) nor less than twenty pounds, as the justices before whom the conviction shall be shall judge to be most proper; and every such pecuniary penalty shall be applied, under the direction of the justices before whom the conviction shall be, in manner following; (that is to say), in the first place, the expenses of the prosecution shall be thereout defrayed, and then such satisfaction shall be made thereout to the party or parties injured as the said justices shall think proper, and afterwards so much of the said penalty shall be paid to the informer or informers as such justices shall think fit, not exceeding in any case ten pounds, and the remainder, if any, shall be paid and distributed to and amongst the poor of the parish, town or place where the conviction shall be, or for the use of such public charity or charities as such justices shall appoint (o); and if such pecuniary penalty as aforesaid shall not be paid on conviction, the said justices shall commit the person convicted to the house of correction or other public prison, there to be kept to hard labour. [*The rest of this section was repealed by 47 & 48 Vict. c. 43.*]

4. And from and after the 1st day of July, 1777, if any person or persons shall be brought before any justices of the peace, and shall be charged upon oath or (being of the people called Quakers) upon solemn affirmation of having been guilty of buying, receiving, accepting or taking, by way of gift, pawn, pledge, sale or exchange, or in any other

embezzling, pawning, &c. of materials is hereby repealed; and other punishments substituted instead thereof.

No person to be convicted, unless before two justices, &c.

So much of the said Act as orders the punishment for buying, receiving, &c. of any goods in the last recited clause mentioned repealed: and other punishments substituted instead thereof.

How justices to proceed when offenders are brought before them for a second offence.

(n) See sect. 8 of the Conspiracy and Protection of Property Act, 1875, *post*.

(o) As to the distribution of the penalty, see 58 Geo. 3, c. 51, which applied to this Act, although therein erroneously referred to as having been passed in the thirteenth year of Geo. 3. See *R. v. Wilcock*, 7 Q. B. 317; *In re Boothroyd*, 15 M. & W. 1. That Act was repealed by 1 & 2 Will. 4, c. 36.

Any such offender convicted before the quarter sessions shall forfeit from 50*l.* to 100*l.*,

or be committed, &c.

Persons selling, pawning, &c. any such materials as aforesaid, knowing them to have been embezzled, shall be liable to the same punishment as for receiving embezzled materials.

How justices to proceed in relation to persons charged on oath with being suspected of having embezzled such materials, or of having received the same, knowing them to have been embezzled, &c.

manner as is described by the said recited Act, in the terms aforesaid, and it shall appear to such justices that the person or persons so charged hath or have been already convicted of the like offence for which he, she or they is or are then charged, then such justices shall not proceed to convict such person or persons, but shall commit him, her or them to the house of correction or some other public prison, there to remain until the next general or general quarter sessions of the peace to be held in and for the county, riding, division, city, liberty, town or place where the offence shall have been committed, or until such offender or offenders shall have entered into a recognizance to answer for such offence at the said next general or general quarter sessions; and the justices in such general or general quarter sessions are hereby authorized and required to take cognizance thereof, and to hear and determine the same; and if such person shall be convicted upon the oath or (being of the people called Quakers) upon the affirmation of one or more credible witness or witnesses, the person so convicted shall forfeit and pay for such offence any sum not more than one hundred pounds (*p*) nor less than fifty pounds, as the said justices shall judge to be most proper; and every such penalty shall be applied and disposed of, under the direction of the said justices in their general or general quarter sessions, in such manner and proportions as the penalty hereinbefore imposed for the first offence of the like nature is by this Act directed to be applied and disposed of; and if such penalty shall not be paid on conviction the said justices shall commit the person so convicted to the house of correction or other public prison, there to be kept to hard labour. [*The rest of this section was repealed by 47 § 48 Vict. c. 43.*]

5. And whereas many frauds are practised in respect to such materials as aforesaid, by persons who sell them knowing them to have been purloined or embezzled; be it therefore further enacted, that after the said 1st day of July, 1777, if any person shall sell, pawn, pledge, exchange or otherwise unlawfully dispose of, or offer to sell, pawn, pledge, exchange or otherwise unlawfully dispose of, any such materials as aforesaid, whether wrought or unwrought, mixed or unmixed, knowing them to have been purloined or embezzled, every such person lawfully convicted shall be liable to the same punishment as he or she would be liable to by virtue of this Act on being convicted of receiving purloined or embezzled materials knowing them to have been purloined or embezzled.

6. And whereas such materials as aforesaid which have been purloined or embezzled are frequently received by persons knowing the same to have been so purloined or embezzled, and such materials being afterwards worked up or otherwise disposed of renders it difficult to convict such offenders; be it therefore enacted, that from and after the said 1st day of July, 1777, when any person or persons shall be brought or charged upon oath before any two or more justices of the peace, by virtue of this Act, with being suspected of or with having purloined or embezzled or with having received any such materials as aforesaid, whether the same be wrought or unwrought, mixed or unmixed, knowing the same to have been either purloined or embezzled or received from some person or persons not entitled to dispose thereof, and it shall be made appear upon the oath or (being of the people called Quakers) upon the affirmation of one or more credible witness or witnesses, to the satisfaction of such justices, that such person or persons hath or have purloined or embezzled or hath or have received any such materials as aforesaid, knowing the same to have been purloined or embezzled, or received from some person or persons not entitled to dispose thereof, it shall and may be lawful for such justices, or for the justices at their general or general quarter sessions of the peace and they are hereby

(*p*) See sect. 8 of the Conspiracy and Protection of Property Act, 1875, *post*.

respectively authorized and empowered (if they shall think fit) to convict such person or persons of having purloined or embezzled or of having received such materials as aforesaid, knowing the same to have been purloined or embezzled or received from some person or persons not entitled to dispose thereof, although no proof shall be given to whom such materials belong; and the person or persons so convicted shall for every such offence be subject to such and the like penalties and punishments, at the discretion of such justices respectively, as persons convicted of buying or receiving any such materials as aforesaid, knowing the same to have been purloined or embezzled, are by this Act subject and liable to (g).

7. And whereas by the said recited Act of 22 Geo. 2, it was also enacted, that if any person or persons intrusted with any of the materials therein and hereinbefore mentioned, in order to prepare, work up or manufacture the same, should not use all such materials in the preparing, working up or manufacturing of the same, and should neglect or delay, for the space of twenty-one days after such materials should be prepared, worked up or manufactured, to return (if required by the owner or owners of such materials so to do) so much of the said materials as should not be used as aforesaid, to the person or persons intrusting him, her or them therewith, such neglect or delay should be deemed a purloining or embezzling of such materials; and the person or persons so neglecting or delaying, being thereof convicted in manner thereinbefore prescribed for the conviction of offenders against the said Act, should suffer the like punishment as persons convicted of purloining or embezzling any of the materials thereinbefore mentioned are by the said Act rendered subject and liable to: And whereas the space of twenty-one days allowed by the said recited Act is thought too long a time to be allowed for returning the said materials, under the circumstances, and in manner aforesaid, and it may be proper to make the punishment for not returning such materials the same as for purloining or embezzling, under this Act: be it therefore further enacted, that from and after the said 1st day of July, 1777, so much of the said recited Act as allows twenty-one days after the preparing, working up or manufacturing the said materials, for returning so much of the said materials, as shall not be used in such preparing, working up or manufacturing, and declares that the punishment for not so returning the said materials within the said time shall be the same as under the said Act is directed for purloining or embezzling, shall be repealed, and only eight days shall be allowed for returning the said materials in manner aforesaid, and the punishment for not returning them within the said eight days shall be the same as is by this Act directed to be inflicted for purloining or embezzling.

[*Sect. 8 was repealed by 38 & 39 Viet. c. 86, s. 17, post.*]

9. And whereas it frequently happens that persons receive the said materials in fictitious names, in order to be manufactured, and that persons receive such materials in their own names, in order to be manufactured by themselves, and afterwards deliver the same to others to be manufactured, without the knowledge or consent of the owners thereof, and that carriers, or other persons employed to deliver materials to workmen to be prepared or manufactured, do designedly deliver such materials to other persons than those intended by the owner of such materials: be it therefore further enacted that from and after the said 1st day of July, 1777, if any person shall receive any of the aforesaid materials in a fictitious name, in order to be manufactured, or if any person shall receive in his or her own name any of the said materials, in

22 Geo. 2,
c. 27, s. 7,
recited and
altered.

If any person shall receive any materials to be manufactured in a fictitious name, or shall deliver the same to any other person without the consent of the

(g) A conviction under this Act for embezzling materials, although confirmed on appeal, cannot be removed by *certiorari*, that writ being taken away by sect. 22. See *R. v. Cook*, 1 Dowl. N. S. 300.

owner, &c., he shall be liable to the same punishment as persons neglecting to perform their work, &c.

Justices, on receiving complaint on oath that embezzled materials are suspected to be concealed in any house, &c., may grant a warrant for searching the same, and persons in whose possession such materials shall be found, guilty of misdemeanor.

order to be manufactured by himself or herself, and afterwards deliver the same, or any part thereof, to any other person, to be manufactured (without the consent of the owner thereof), or if any carrier, or other person employed to deliver any such materials to any workmen, to be prepared or wrought up, shall designedly deliver the same to any other person than the person to whom such materials were ordered or intended to be delivered by the owner thereof, all and every person and persons offending in any of the cases aforesaid shall for every such offence be liable to prosecution, in the same manner and to the same punishment as is by this Act directed in respect to persons taking in any of the said materials, in order to work up, and afterwards wilfully neglecting or refusing the performance of their work for the space of time aforesaid.

10. And whereas it frequently happens that materials used in the manufactures before mentioned are found or known to be concealed in the possession of persons who have received the same knowing them to be purloined or embezzled, or of persons known not to be entitled to dispose of the same : And whereas the discovery and conviction of the purloiners and embezzlers, buyers and receivers of such materials, is full of difficulty, from the close and clandestine manner in which the offence is committed, and there is still greater difficulty in proving whose property such materials are : and it would tend to the discouragement and suppression of such offence if the discovery and conviction of such offenders were rendered more easy : And whereas by the said recited Act of 22 Geo. 2, justices of the peace, after conviction of any offender for purloining or embezzling the said materials, or for buying or receiving the same, are authorized to grant warrants for searching the houses and other places of the persons so convicted, but no such authority is given before conviction, nor in any other house or place except such as belongs to a person convicted ; be it therefore further enacted, that it shall and may be lawful for any two (*r*) justices of the peace of any county, riding, division, city, liberty, town or place, upon complaint made to them upon oath by any one credible person, or (being of the people called Quakers) upon solemn affirmation, that there is cause to suspect that any such purloined or embezzled materials, whether mixed or unmixed, wrought or unwrought, are concealed in any dwelling-house, outhouse, yard, garden or other place (*s*) or places, by virtue of a warrant under their hands and seals (*t*), to cause every such dwelling-house, outhouse, yard, garden or place to be searched in the daytime, and if any such materials suspected to be purloined or embezzled shall be found therein, to cause the same, and the person or persons in whose house, outhouse, yard, garden or other place the same shall be found, to be brought before any two (*u*) justices of the peace for the same county, riding, division, city, liberty, town or place, and if the said person or persons shall not give an account to the satisfaction of such justices how he, she or they came by the same, then the said person or persons so offending shall be deemed and adjudged guilty of a misdemeanor, and shall be punished in manner

(*r*) If the complaint is made to different justices from those who determine it, the conviction should state that, as required by 3 Geo. 4, c. 23, s. 2 : a conviction which omitted such statement was quashed, *R. v. Wilcock*, 7 Q. B. 317.

(*s*) A "warehouse" of a silk dealer and manufacturer upwards of a mile and a half from his dwelling-house, is a "place" within the meaning of this section, *R. v. Edmundson*, 2 Ell. & Ell. 77.

(*t*) A search warrant under this section is necessary to justify entering a house, to search for embezzled materials, *Davis v. Nest*, 6 C. & L. 167. But in trespass for breaking and entering the house of A., and taking his woollen yarn, the defendant might, under not guilty, show a condemnation of the yarn under this statute ; as that shows that A. could have no property in it, *ibid*.

(*u*) See note (*v*), *supra*.

hereinafter mentioned, although no proof shall be given to whom such materials belong (r).

11. And every peace officer, constable, headborough or tythingman in every county, city, town corporate or other place where there shall be officers, and every beadle within his ward, parish or district, and every watchman, during such time only as he is on his duty, shall and may apprehend or cause to be apprehended all and every person or persons who may reasonably be suspected of having or carrying or any ways conveying, at any time after sunset and before sunrise, any of such materials suspected to be purloined or embezzled, and the same, together with such person or persons, as soon as conveniently may be, convey or carry before any two justices of the peace for the county, riding, division, city, liberty, town or place within which the suspected person or persons shall be apprehended; and if the person or persons so apprehended in conveying any such materials shall not produce the party or parties, duly entitled to dispose thereof, from whom he, she or they bought or received the same, or some other credible witness, to testify upon oath or (being of the people called Quakers) upon solemn affirmation to the sale or delivery of the said materials (which oath or affirmation respectively such justices are hereby empowered to administer) or shall not give an account, to the satisfaction of such justices, how he, she or they came by the same, then the said person or persons so apprehended shall be deemed and adjudged guilty of a misdemeanor, and be punished in manner hereinafter mentioned, although no proof shall be given to whom such materials belong.

12. Provided always, that in either of the two cases last before mentioned, when any person or persons who shall be brought before any two justices of the peace shall request of such justices to appoint a reasonable time to produce the person or persons, duly entitled to sell or dispose of the same, of or from whom he, she or they bought or received the same, or some one or more credible witness or witnesses to prove the sale or delivery thereof, then and in such case it shall and may be lawful for the said justices, and they are hereby authorized and required to appoint such reasonable time as aforesaid, and to issue out a summons to the constable or other peace officer of the parish or place where such person or persons, or such witness or witnesses, shall respectively reside, requiring him, her, or them to appear before two or more justices at such time and place as shall be so appointed by such justices, in order to be examined and give evidence on oath or (being of the people called Quakers) solemn affirmation of the several matters aforesaid: but such person or persons, at the time of making such request, shall enter into a recognizance, with or without surety or sureties, as such justices shall think proper, for his, her or their appearance before them at the time so to be set, or for want of such recognizance as aforesaid, shall be committed until the time that shall be set or appointed by the said justices for the appearance of such party or parties, witness or witnesses; and if at such appointed time such person or persons shall be convicted of any of the offences aforesaid (x), then and in such case he, she or they shall

Peace officers in towns corporate, &c., may apprehend all persons suspected of having, or carrying after sunset, any materials suspected to be purloined, &c.

Justices may, at the request of persons brought before them, appoint a reasonable time to produce the persons entitled to dispose of the materials, &c., on the persons making such request entering into a recognizance, &c.

(x) In a conviction under this section it is not necessary to state the ownership of the goods, *In re Boothroyd*, 15 M. & W. 1; and see *ibid.* as to distribution of penalty. As to an indictment for perjury committed by exhibiting false information under this section, see *R. v. Goodfellow*, Carr. & M. 569.

(y) A conviction which stated that A. B. was convicted before the magistrates upon the oath of T. J., a credible witness, of having in his possession, in his dwelling-house, certain materials used in the woollen manufacture, suspected to be embezzled and purloined, to wit, &c., he not producing the party from whom he bought the same or giving a satisfactory account; and then going on to adjudicate, was held good in *Davis v. Nest*, 6 C. & P. 167.

On any person being convicted of a misdemeanor, as aforesaid, the materials so found shall be deposited in the hands of the churchwardens, &c.,

and if any person can prove his property in the said materials they shall be delivered to him, on paying the charges of removing, &c., but if no person prove his property in them, they shall be sold, &c.

Penalty on persons having in their possession materials suspected to be purloined, &c.

Owners of materials delivered to

suffer such punishment as is hereinbefore directed to be inflicted on persons guilty of such offences.

13. And where any person or persons shall be convicted of a misdemeanor in either of the two cases last before mentioned, it shall and may be lawful for the justices before whom the conviction shall be to cause the said materials so found or seized as aforesaid to be deposited in the hands of the churchwardens or overseers of the poor of the place where such materials shall be found or seized, or in any other convenient place, for any time not exceeding thirty days, and in the mean time to order the said churchwardens and overseers of the poor, or one of them, to insert an advertisement in some one or more of the public newspapers usually published or circulated in or near such place, or otherwise to cause notice to be given by some public crier, and by fixing on the church or chapel door notice describing such materials, and where the same are so deposited, to the end that persons having lost such materials, or any reputable person or persons in their behalf, may come and claim the same; and in case any person or persons can prove his, her or their property in the said materials upon oath, or (being of the people called Quakers) upon his, her or their solemn affirmation, to the satisfaction of any two justices of the peace for such county, riding, division, city, liberty, town or place, then such justices shall order restitution of such materials to the owner or owners thereof, after paying the reasonable charges of removing, depositing and giving public notice of the same; but if before the end of the said thirty days no person or persons shall come and prove his, her or their property in such materials, nor any reputable person or persons on his, her or their behalf, then the said justices shall order and direct the same to be sold for the best price that can reasonably be had, and after deducting such charges as aforesaid, together with the charges of sale, one moiety of the money arising from such sale shall be given to the person or persons, or either of them, who shall apprehend or prosecute the offender or offenders guilty of either of the misdemeanors aforesaid, as the said justices shall appoint, and the other moiety thereof, either to and amongst the poor of the parish, town or place where the conviction shall be, or to such public charity or charities as the justices convicting shall appoint.

14. And every person deemed and adjudged guilty of a misdemeanor, in having in his or her possession any materials suspected to be purloined or embezzled, and not producing the party or parties, being duly entitled to dispose of the same, of whom he or she bought or received the same, nor giving a satisfactory account how he or she came by the same, or of a misdemeanor in having, carrying, or conveying of the said materials suspected to be purloined or embezzled, and not producing the party or parties, being duly entitled to dispose of the same, of whom he or she bought or received the same, nor any credible witness to testify upon oath, or (being of the people called Quakers) upon solemn affirmation, the sale or delivery thereof, nor giving a satisfactory account how he or she came by the same (as the case shall be), shall for every such misdemeanor forfeit, for the first offence, the sum of twenty pounds, and for the second offence the sum of thirty pounds, and for every subsequent offence the sum of forty pounds: [power of distress repealed by 47 & 48 Vict. c. 43], of which forfeiture one moiety shall be paid to the informer, and the other moiety thereof to and amongst the poor of the parish, town or place where such conviction shall be, or to such public charity or charities as the justices convicting shall appoint (x). [Rest of this section repealed by 47 & 48 Vict. c. 43.]

15. And whereas it sometimes happens, by occasion of the very long detention of such materials as aforesaid, delivered out to journeymen or

(x) As to distribution of the penalty see *ante*, p. 513, note (o).

other persons employed to work up the same, it cannot be known to the master or owners of such materials whether the same may have been purloined or embezzled, or whether the said materials are wholly or in part wrought or begun to be wrought, or in what state or condition such materials may be; for remedy whereof be it further enacted, that from and after the said 1st day of July, 1777, it shall be lawful for the owner or owners of any such materials, from time to time, as occasion shall require, to demand entrance, and enter at all seasonable hours in the daytime, into the shops or outhouses of any person or persons employed by him or them to work up any of the said materials, or other place or places, where the work shall be carried on, and there to inspect the state and condition of such materials; and in case of refusal by any such person or persons so employed to permit such entrance or inspection, he, she or they so refusing shall forfeit and pay such sum of money, not exceeding forty shillings nor less than ten shillings, as the justices before whom he, she or they shall be convicted shall think proper, to be recovered and applied in the same manner as is by this Act directed for the misdemeanor of being in the possession of any such materials without being able to account satisfactorily for such possession.

16. And whereas the said recited Act of 22 Geo. 2 contains no provision for the protection and recovery of the tools and implements with which any person or persons employed in preparing, working up or manufacturing such materials as aforesaid shall be intrusted for that purpose, nor any provision in respect to the drugs and ingredients used in dyeing, preparing or manufacturing such of the said materials as are usually dyed, prepared or manufactured, be it therefore enacted, that from and after the said 1st day of July, 1777, every penalty or punishment directed by or other provision contained in the said recited Act in respect to the said materials, so far as the said recited Act is not varied by this Act, and all the provisions in this Act contained in respect to the said materials, shall extend and be applicable to any tool or tools and implement or implements, with which any person or persons shall be intrusted for making, working up or manufacturing the said materials, and also to any drug or drugs, ingredient or ingredients, with which any person or person shall be intrusted, for the purpose of dyeing, preparing or manufacturing such of the aforesaid materials as are usually dyed, prepared or manufactured, in the same manner as if the said tools and implements, drugs and ingredients were particularly mentioned both in the said recited Act and in the preceding provisions of this Act.

17. And whereas journeymen dyers (*y*), servants and apprentices frequently abuse the trust reposed in them, by dyeing goods for their own profit, without the consent of their masters, be it therefore enacted, that from and after the said 1st day of July, 1777, if any person hired, retained or employed as a journeyman dyer, or as a servant or apprentice, in the dyeing of any felt or hat, or any woollen, linen, fustian, cotton, leather, fur, flax, mohair or silk materials, whether the same shall be wrought or unwrought, or shall be mixed or unmixed with other of the said materials, shall, without the consent of the master, person or persons by whom such journeymen, servant or apprentice shall be hired, retained or employed, wilfully dye any of the said materials, whether wrought or unwrought, or

journeymen, &c., to be worked up, may at all seasonable hours, enter their shops or outhouses, to inspect their materials.

Penalty on refusal of entrance, &c.

All penalties in the Act 22 Geo. 2, and in this Act relating to the said materials, shall be applicable to the tools &c. with which any person is intrusted for manufacturing the same.

If any journeyman dyer, &c., shall, without the consent of his employer, dye any woollen, linen, &c., he shall forfeit, for the first offence, 10s., &c.;

(*y*) This Act is not repealed as to *dyers* by 6 & 7 Vict. c. 40; see sect. 34, which confines that Act to *manufacturers*; see 11 Q. B. 941. Where a dyer permitted his servants to use his dye, &c., for their own materials and such as he entrusted them with, but they made a profit by using them for other materials without his knowledge, and there was no proof of a conspiracy besides the concurrence in that act; it was held, that assuming the act itself to be a larceny, the servants might still be convicted of the conspiracy as a distinct offence, *R. v. Button*, 11 Q. B. 929.

or if any person shall procure any such materials to be so dyed, he shall forfeit for the first offence, 5*s.*, &c.

mixed or unmixed with other of the said materials, or without such consent shall wilfully receive any such materials as aforesaid, for the purpose of dyeing the same, whether the same shall be dyed or prepared for dyeing, he or she so guilty of either of the said offences shall for the first offence forfeit the sum of ten shillings, and for the second offence the sum of twenty shillings, and for every subsequent offence the sum of forty shillings; or if any person shall procure any such materials as aforesaid to be dyed by any person so hired, retained or employed as a journeyman, servant or apprentice, without the consent of his or her master or employer, or shall offer any such materials to any such journeyman, servant or apprentice, for the purpose aforesaid, he or she so offending, being thereof lawfully convicted by the oath or (being of the people called Quakers) affirmation of one or more credible witness or witnesses, before two or more justices of the peace for the county, riding, division, city, liberty, town or place where the offence shall be committed, shall for the first offence forfeit the sum of five shillings, and for the second offence the sum of twenty shillings, and for every subsequent offence the sum of four pounds; and each of the said penalties shall be paid to the informer or informers, and in case of nonpayment on conviction the person so convicted shall be committed by the justices before whom the conviction shall be to the common gaol or house of correction. [*The rest of this section was repealed by 47 & 48 Vict. c. 43.*]

[*Sect. 18 was repealed by 24 & 25 Vict. c. 101.*]

[*Sect. 19 was repealed by 38 & 39 Vict. c. 86, s. 17, post.*]

20. And whereas the said Act of 22 Geo. 2 only gives an appeal from an order of any justice or justices of the peace to the general or general quarter sessions of the peace where an order is made by any justice or justices of the peace in the case of the buyer or receiver of such purloined or embezzled materials as aforesaid, and in respect to the sale or disposal of such materials found on searching by warrant, after any conviction for purloining or embezzling, or for receiving or buying such purloined or embezzled materials; and whereas it is thought more proper to give a right of appealing in the case of other orders of any justice or justices of the peace to be made by force of an Act made in the 12th Geo. 1 (intituled "An Act to prevent unlawful Combinations of Workmen employed in the Woollen Manufactures, and for better Payment of their Wages") (c), and of the said Act, and also in the case of all orders to be made by any justices of the peace under this Act; be it therefore further enacted, that if any person shall think himself or herself aggrieved by the order or judgment of any two justices before whom he or she shall have been convicted of any of the offences in the said Acts of 12th Geo. 1 and the 22 Geo. 2, or in this Act, such person may appeal, and the said justices are hereby required to make known to such person, at the time of such conviction his or her right to appeal (a), to the next general or general quarter sessions of the peace. [*The rest of this section was repealed by 47 & 48 Vict. c. 43.*]

[*Sect. 21 was repealed by 47 & 48 Vict. c. 43. See R. v. Wilcock, 7 Q. B. 317; In re Boothroyd, 15 M. & W. 1, on the form of conviction.*]

22. Provided always that no order made touching or concerning any of the matters in this Act contained, or any proceedings to be had touching the conviction of any offender or offenders against the said Act of 22 Geo. 2, or this Act, shall be quashed for want of form, or be removed or removable

Persons aggrieved by the order of any two justices, &c., may appeal to the quarter sessions.

Proceedings not to be quashed for want of form nor removed by certiorari

(c) Repealed by the Master and Servant Act, 1889 (52 & 53 Vict. c. 24).

(a) If they make known to a party convicted his right to appeal, and he declines appealing, they need not proceed to inform him of the necessary steps to be taken in order to appeal, *R. v. Justices of West Riding of Yorkshire*, 3 M. & S. 494.

by *certiorari* into his Majesty's Court of King's Bench (*b*). [*The rest of this section was repealed by 47 & 48 Vict. c. 43.*]

23. Provided also that nothing herein contained shall extend or be construed to extend to repeal any former law or laws now in being for the punishment of any of the offences herein above specified, except so far as is particularly expressed by this Act; and no offender who shall have been proceeded against upon or by virtue of this Act for any of the offences herein specified shall for the same offence be afterwards proceeded against upon or by virtue of any such former law or laws.

[*Sect. 24 was repealed by 34 & 35 Vict. c. 116.*]

[*Sect. 25 was repealed by the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), and by 24 & 25 Vict. c. 101.*]

This Act not to repeal any former law, except as is herein particularly expressed.

THE TRUCK ACT, 1831.

1 & 2 WILL. 4, c. 37.

An Act to Prohibit the Payment, in certain Trades, of Wages in Goods, or otherwise than in the current Coin of the Realm (c).
[15th October, 1831.]

Whereas it is necessary to prohibit the payment, in certain trades, of wages in goods, or otherwise than in the current coin of the realm; be it therefore enacted by (&c. &c.), that in all contracts hereafter to be made for the hiring of any artificer (*d*) [*in any of the trades hereinafter enumerated (e)*] or for the performance by any artificer of any labour [*in any of the said trades*], the wages of such artificer shall be made payable in the current coin of this realm only and not otherwise; and that if in any such contract the whole or any part of such wages shall be made payable in any manner other than in the current coin aforesaid, such contract shall be and is hereby declared illegal, null and void (*f*).

Contracts for the hiring of artificers must be made in the current coin of the realm;

(*b*) This section takes away the writ of *certiorari* only from offences for the first time created by 22 Geo. 2, c. 27, and does not apply to those created by 12 Geo. 1, c. 34, and extended to the silk and cotton trades by 22 Geo. 2, c. 27; *R. v. Rogers*, 5 B. & Ald. 773. See further 6 & 7 Vict. c. 40, *post*. The Act of 12 Geo. 1, c. 34, was repealed by the Master and Servant Act, 1889 (52 & 53 Vict. c. 24).

(*c*) This Act and the Truck Act, 1887, *post*, and the Truck Act, 1896, *post*, are to be construed as one Act. As to payment of wages without stoppage in the hosiery manufacture, see the Hosiery Manufacture (Wages) Act, 1874, *post*. By sect. 14 of the Coal Mines Regulation Act, 1887, an employer may under certain circumstances retain from miners their contributions to the wages of the check-weigher.

(*d*) The clause in sect. 25, defining the meaning of "artificer," and sect. 19, which specified the trades to which this Act applied, were repealed by the Truck Act, 1887, *post*, in sect. 2 of which a new meaning is given to the word "artificer."

(*e*) These words refer to sect. 19, which was repealed by the Truck Act, 1887, and were themselves repealed, together with similar expressions, which are printed in italics and in brackets, occurring in other sections of the Act, by the Statute Law Revision Act, 1891.

(*f*) Plaintiff, a framework knitter, worked as a weaver of gloves for defendant in frames provided by defendant at an agreed gross price per dozen pairs. Defendant was a sub-contractor, furnishing the work by agreement to a master manufacturer, who found machinery and materials. Defendant settled with

and must not contain any stipulations as to the manner in which the wages shall be expended.

All wages must be paid to the workman in coin.

Payment in goods declared illegal.

2. If in any contract hereafter to be made between any artificer [*in any of the trades hereinafter enumerated*] and his employer, any provision shall be made directly or indirectly respecting the place where, or the manner in which, or the person or persons with whom the whole or any part of the wages due or to become due (*g*) to any such artificer shall be laid out or expended, such contract shall be and is hereby declared illegal, null and void (*h*).

3. The entire amount of the wages earned by or payable to any artificer [*in any of the trades hereinafter enumerated*] in respect of any labour by him done [*in any such trade*] shall be actually paid to such artificer in the current coin of this realm, and not otherwise; and every payment made to any such artificer by his employer, of or in respect of any such wages, by the delivering to him of goods or otherwise than in the current coin aforesaid, except as hereinafter mentioned, shall be and is hereby declared illegal, null and void (*i*).

plaintiff weekly for the work done, deducting out of the gross price per dozen certain charges which were according to the known custom of the trade, namely:—1. A frame rent per week; 2. A payment per week for use of defendant's premises to work in, standing room for the frame, defendant's trouble and loss of time in procuring materials and conveying them to plaintiff, defendant's responsibility to the master manufacturer under whom he contracted for the work, superintendence of the work, sorting the goods when made, and delivering them to the master manufacturer; 3. Payment to a boy for winding the yarn, and wear and tear of machinery; 4. A penny per shilling on the net sum earned by plaintiff above fourteen shillings per week as compensation to defendant for a percentage paid by him to the master manufacturer on the amount of goods manufactured by defendant for him with machinery rented of him by defendant. There was no written contract between plaintiff and defendant: held, that the agreement to pay plaintiff's wages with these deductions was not a contract to pay part of such wages otherwise than in the current coin of the realm, within this section; nor was a contract in writing under sect. 23 necessary to legalize such deductions: held also, that there was not in this case any demise of a "tenement" within sect. 23; and *quære*, whether there was a demise of anything at a rent thereon reserved within that section: *Chawner v. Cummings*, 8 Q. B. 311; *acc. Archer v. James*, 31 L. J., Q. B. 153. An agreement by a company to pay wages at the rate of twenty-two shillings a week, two shillings of which was to be satisfied by shares in the company, was held illegal in *Glasgow v. Independent Printing Co.*, (1901) 2 Ir. R. 278. In *Hewlett v. Allen* in the Court of Appeal, (1892) 2 Q. B. 662, Bowen, L. J., gives a general analysis of the earlier sections of this Act.

(*g*) See sect. 6 of the Truck Act, 1887.

(*h*) In *Hewlett v. Allen*, (1894) A. C. 383, it was a term in the contract of service between the plaintiff and the defendants, her employers, that she should be a member of the sick and accident club established for the benefit of the defendants' *employés*, and in paying her her wages the defendants each week deducted the amount of her subscription to the club. The House of Lords did not decide whether the contract came within the provisions of this section, but held that as the employer had duly paid over to the club treasurer, at the plaintiff's desire, the amount weekly deducted from her wages, she had been actually paid her wages in current coin within sects. 3 and 4.

(*i*) It is also a punishable offence under sect. 9. Sects. 23 and 24 provide certain exceptions from the general enactment in sect. 3. As to deductions in respect of fines and damage to goods, see the Truck Act, 1896, *post*. Deductions from monthly payments of wages for a "doctor's fund" were held illegal in a case where the employer had retained the deductions in his own hands: *Ex parte Cooper, Re Morris*, 26 Ch. Div. 693; but in a case where the deductions had been paid over to the treasurer of the club at the request of the workman, the House of Lords held that the wages earned had been

4. Every artificer [*in any of the trades hereinafter enumerated*] shall be entitled to recover from his employer [*in any such trade*] in the manner by law provided for the recovery of servant's wages, or by any other lawful ways and means, the whole or so much of the wages earned by such artificer [*in such trade*] as shall not have been actually paid to him by such his employer in the current coin of this realm.

5. In any action, suit or other proceeding to be hereafter brought or commenced by any artificer against his employer, for the recovery of any sum of money due to any such artificer, as the wages of his labour [*in any of the trades hereinafter enumerated*] the defendant shall not be allowed to make any set-off (*j*) nor to claim any reduction of the plaintiff's demand, by reason or in respect of any goods, wares or merchandize had or received by the plaintiff as or on account of his wages or in reward for his labour, or by reason or in respect of any goods, wares or merchandize sold, delivered or supplied to such artificer at any shop or warehouse kept by or belonging to such employer, or in the profits of which such employer shall have any share or interest.

6. No employer of any artificer [*in any of the trades hereinafter enumerated*] shall have or be entitled to maintain any suit or action in any court of law or equity against any such artificer, for or in respect of any goods, wares or merchandize sold, delivered or supplied to any such artificer by any such employer, whilst in his employment, as or on account of his wages or reward for his labour, or for or in respect of any goods, wares or merchandize sold, delivered or supplied to such artificer at any shop or warehouse kept by or belonging to such employer, or in the profits of which such employer shall have any share or interest.

7. If any artificer, or his wife or widow, or if any child of any such artificer, not being of the full age of twenty-one years, shall become chargeable to any parish or place, and if within the space of three calendar months next before the time when any such charge shall be incurred such artificer shall have earned or have become entitled to receive any wages for any labour by him done [*in any of the said trades*] which wages shall not have been paid to such artificer in the current coin of this realm, it shall be lawful for the overseers (*k*) or overseer of the poor in such parish or place to recover from the employer of such artificer in whose service such labour was done the full amount of wages so unpaid, and to proceed for the recovery thereof by all such ways and means as such artificer himself might have proceeded for that purpose; and the amount of the wages which may be so recovered shall be applied in reimbursing such parish or place all costs and charges incurred in respect of the person or persons to become chargeable, and the surplus shall be applied and paid over to such person or persons.

8. Provided always that nothing herein contained shall be construed to prevent or to render invalid any contract for the payment, or any

Artificers may recover wages, if not paid in the current coin.

In an action brought for wages no set-off shall be allowed for goods supplied by the employer, or by any shop in which the employer is interested.

No employer shall have any action against his artificer for goods supplied to him on account of wages.

If the artificer or his wife or children become chargeable to the parish the overseers may recover any wages earned within the three preceding months, and not paid in cash.

Not to invalidate the payment of wages

actually paid within the meaning of this section: *Hewlett v. Allen*, (1894) A. C. 383. An offence committed by payment of wages in goods is not purged by subsequent payment in cash: *Wilson v. Cookson*; *Fisher v. Jones*, 32 L. J., M. C. 177. In *Smith v. Walton*, 3 C. P. D. 109, it was held that an offence was committed where an employer gave a workman, in part payment of wages, a piece of cloth which the workman had damaged; and in *Gould v. Haynes*, 59 L. J., M. C. 9, where a licensed victualler supplied liquor on credit to workmen employed by him in a brickfield, and in the evening lent them money to pay for the liquor, but the next day deducted the amount of the loans from their wages. Payment by a note which is ultimately, though not immediately, to result in the delivery of goods, is an offence which is complete on the delivery of the note: *Athersmith v. Drury*, 1 E. & E. 46.

(*j*) See sect. 5 of the Truck Act, 1887.

(*k*) Or guardians of the poor: sect. 16 of the Truck Act, 1887.

in bank notes,
if artificer
consents.

Penalties on
employers
entering into
contracts
hereby de-
clared illegal.

Proviso.

A partner not
to be liable in
person for the
offence of his

actual payment, to any artificer of the whole or any part of his wages, either in the notes of the governor and company of the Bank of England, or in the notes of any person or persons carrying on the business of a banker, and duly licensed to issue such notes in pursuance of the laws relating to his Majesty's revenue of stamps, or in drafts or orders for the payment of money to the bearer on demand, drawn upon any person or persons carrying on the business of a banker, being duly licensed as aforesaid, within fifteen miles of the place where such drafts or orders shall be so paid, if such artificer shall be freely consenting to receive such drafts or orders as aforesaid, but all payments so made with such consent as aforesaid, in any such notes, drafts or orders as aforesaid, shall for the purposes of this Act be as valid and effectual as if such payments had been made in the current coin of the realm.

9. Any employer of any artificer [*in any of the trades hereinafter enumerated*] who shall, by himself or by the agency of any other person or persons, directly or indirectly enter into any contract or make any payment hereby (*l*) declared illegal, shall for the first offence forfeit a sum not exceeding ten pounds [*nor less than five pounds (m)*], and for the second offence any sum not exceeding twenty pounds nor less than ten pounds, and in case of a third offence any such employer shall be and be deemed guilty of a misdemeanor, and being thereof convicted, shall be punished by fine only, at the discretion of the court, so that the fines shall not in any case exceed the sum of one hundred pounds.

10 (*n*). Provided always, that no person shall be punished as for a second offence under this Act unless ten days at the least shall have intervened between the conviction of such person for the first and the conviction by such person of the second offence, but each separate offence committed by any such person before the expiration of the said term of ten days shall be punishable by a separate penalty, as though the same were a first offence; and that no person shall be punished as for a third offence under this Act, unless ten days at the least shall have intervened between the conviction of such person for the second and the conviction by such person of the third offence: but each separate offence committed by any such person before the expiration of the said term of ten days shall be punishable by a separate penalty, as though the same were a second offence; and that the fourth or any subsequent offence which may be committed by any such person against this Act shall be enquired of, tried and punished in the manner herein-before provided in respect of any third offence; and that if the person or persons preferring any such information shall not be able or shall not see fit to produce evidence of any such previous conviction or convictions as aforesaid, any such offender as aforesaid shall be punished for each separate offence by him committed against the provisions of this Act by an equal number of distinct and separate penalties, as though each of such offences were a first or a second offence, as the case may be; and that no person shall be proceeded against or punished as for a second or as for a third offence at the distance of more than two years from the commission of the next preceding offence.

Secls. 11 and 12 were repealed by 17 & 48 Vict. c. 43.]

13. No person shall be liable to be convicted of any offence against this Act committed by his or her copartner in trade, and without his or her knowledge, privity or consent; but it shall be lawful, when any penalty or any sum for wages, or any other sum, is ordered to be paid, under the

(l) See note to sect. 3. Other offences punishable under this section are created by the Truck Acts, 1887 and 1896.

(m) Words in italics repealed by 47 & 48 Vict. c. 43.

(n) The first part of this section, providing for the recovery of penalties before justices, was repealed by the Summary Jurisdiction Act, 1884, and the Truck Act, 1887.

authority of this Act, and the person or persons ordered to pay the same shall neglect or refuse to do so, to levy the same by distress and sale of any goods belonging to any copartnership concern or business in the carrying on of which such charges may have become due or such offence may have been committed: and in all proceedings under this Act to recover any sum due for wages it shall be lawful in all cases of copartnership for the justices at the hearing of any complaint for the nonpayment thereof, to make an order upon any one or more copartners for the payment of the sum appearing to be due; and in such case the service of a copy of any summons or other process, or of any order, upon one or more of such copartners, shall be deemed to be a sufficient service upon all.

14. In all cases it shall be deemed and taken to be sufficient service of any summons to be issued against any offender or offenders for any justice or justices of the peace, under the authority of this Act, if a duplicate or true copy of the same be left at or upon the place used or occupied by such offender or offenders for carrying on his, her or their trade or business, or at the place of residence of any such offender or offenders, being at or upon any such place as aforesaid, the same being directed to such offender or offenders by his, her or their right or assumed name or names.

[*Sects. 15 and 16 were repealed by 47 & 48 Vict. c. 43.*]

17. No conviction, order or adjudication made by any justices of the peace under the provisions of this Act shall be quashed for want of form, nor be removed by *certiorari* or otherwise into any of his Majesty's superior courts of record. [*The rest of the section was repealed by 47 & 48 Vict. c. 43.*]

[*Sect. 18, as to the application of penalties, was repealed by the Truck Act, 1887.*]

19 (o). And be it further enacted, that nothing herein contained shall extend to any artificer, workman or labourer, or other person engaged or employed in any manufacture, trade or occupation, excepting only artificers, workmen, labourers and other persons employed in the several manufactures, trades and occupations following; (that is to say), in or about the making, casting, converting or manufacturing of iron or steel, or any parts, branches or processes thereof; or in or about the working or getting of any mines of coal, ironstone, limestone, salt rock; or in or about the working or getting of stone, slate or clay; or in the making or preparing of salt, bricks, tiles or quarries; or in or about the making or manufacturing of any kinds of nails, chains, rivets, anvils, vices, spades, shovels, screws, keys, locks, bolts, hinges or any other articles or hardwares made of iron or steel, or of iron and steel combined, or of any plated articles of cutlery, or of any goods or wares made of brass, tin, lead, pewter or other metal, or of any japanned goods or wares whatsoever; or in or about the making, spinning, throwing, twisting, doubling, winding, weaving, combing, knitting, bleaching, dyeing, printing, or otherwise preparing of any kinds of woollen, worsted, yarn, stuff, jersey, linen, fustian, cloth, serge, cotton, leather, fur, hemp, flax, mohair or silk manufactures whatsoever, or in or about any manufactures whatsoever made of the said last-mentioned materials, whether the same be or be not mixed one with another; or in or about the making or otherwise preparing, ornamenting or finishing of any glass, porcelain, china or earthenware whatsoever, or any parts, branches, or processes thereof, or any materials used in any of such last-mentioned trades or employments; or in or about the making or preparing of bone, thread, silk, or cotton lace, or of lace made of any mixed materials.

20. Nothing herein contained shall extend to any domestic servant [or

co-partner, but the partnership property to be so liable.

How summonses are to be served.

Convictions not to be quashed for want of form.

Specification of the trades to which the Act is to apply.

Domestics.

(o) This section was repealed by the Truck Act, 1887.

(p) The words in brackets were repealed by the Truck Act, 1887; and see sect. 4 of that Act.

[Sects. 21 and 22 were repealed by the Truck Act, 1887.]

Particular exceptions to the generality of the law.

23. Nothing herein contained (*q*) shall extend or be construed to extend to prevent any employer or any artificer, or agent of any such employer, from supplying or contracting to supply to any such artificer any medicine or medical attendance, or any fuel, or any materials, tools or implements to be by such artificer employed in his trade or occupation, if such artificers be employed in mining, or any hay, corn or other provender to be consumed by any horse or other beast of burden employed by any such artificer in his trade and occupation; nor from demising to any artificer [*workman or labourer employed in any of the trades or occupations enumerated in this Act*] the whole or any part of any tenement at any rent (*r*) to be thereon reserved; nor from supplying or contracting to supply to any such artificer any victuals dressed or prepared under the roof of any such employer, and there consumed by such artificer; nor from making or contracting to make any stoppage or deduction from the wages of any such artificer, for or in respect of any such rent; or for or in respect of any such medicine or medical attendance; or for or in respect of such fuel, materials, tools, implements, hay, corn or provender, or of any such victuals dressed and prepared under the roof of any such employer; or for or in respect of any money advanced to such artificer for any such purpose as aforesaid; *provided always*, that such stoppage or deduction shall not exceed the real and true value of such fuel, materials, tools, implements, hay, corn and provender, and shall not be in any case made from the wages of such artificer, unless the agreement or contract for such stoppage or deduction shall be in writing, and signed by such artificer (*s*).

Employers may advance money to artificers for certain purposes.

24. Nothing herein contained shall extend or be construed to extend to prevent any such employer from advancing to any such artificer any money to be by him contributed to any friendly society or bank for savings duly established according to law, nor from advancing to any such artificer any money for his relief in sickness, or for the education of any child or children of such artificer, nor from deducting or contracting to deduct any sum or sums of money from the wages of such artificers for the education of any such child or children of such artificer, [*and unless the agreement or contract for such deduction shall be in writing, and signed by such artificer (t).*]

Definition of terms,

25. In the meaning and for the purposes of this Act [*all workmen, labourers and other persons in any manner engaged in the performance of any work, employment or operation of what nature soever, in or about the several trades and occupations aforesaid, shall be and be deemed "artificers"; and within the meaning and for the purposes aforesaid (u)*] all masters, bailiffs, foremen, managers, clerks and other persons engaged in the hiring, employment or superintendence of the labour of any such artificers, shall be and be deemed to be "employers"; and within the meaning and for the purposes of this Act any money or other

"employers."

(*q*) See sect. 3.

(*r*) See *Chavner v. Cummings*, ante, note to sect. 1; *Cutts v. Ward*, L. R., 2 Q. B. 357.

(*s*) *Pillar v. Llynvi Coal Co.*, L. R., 4 C. P. 752.

(*t*) The words in brackets were repealed by the Truck Act, 1887.

(*u*) The words in brackets were repealed by the Truck Act, 1887; see now sect. 2 of that Act. Upon the question how far sub-contractors, employing workmen under them, but also working personally, came within this definition, the following cases were decided: *Riley v. Warden*, 2 Ex. 59; *Sharman v. Saunders*, 13 C. B. 166; *Ingram v. Barnes*, 26 L. J., Q. B. 319; *Steman v. Barrett*, 33 L. J., Ex. 153; *Weaver v. Floyd*, 21 L. J., Q. B. 151; and *Bowers v. Lovekin*, 25 L. J., Q. B. 371. See also *Lawrence v. Todd*, 32 L. J., M. C. 238; *Whiteley v. Armitage*, 13 W. R. 141; *Pillar v. Llynvi Coal Co.*, L. R., 4 C. P. 752.

thing had or contracted to be paid, delivered or given as a recompense, reward or remuneration for any labour done or to be done, whether within a certain time or to a certain amount, or for a time or an amount uncertain, shall be deemed and taken to be the "wages" of such labour; and within the meaning and for the purposes aforesaid any agreement, understanding, device, contrivance, collusion or arrangement whatsoever on the subject of wages, whether written or oral, whether direct or indirect, to which the employer and artificer are parties or are assenting, or by which they are mutually bound to each other, or whereby either of them shall have endeavoured to impose an obligation on the other of them, shall be and be deemed a "contract."

"wages,"

"contract."

[Sect. 26, as to the commencement of the Act, was repealed by the Statute Law Revision Act, No. 2, 1888.]

27. The provisions of this Act shall extend over the whole of that part of the United Kingdom of Great Britain and Ireland called Great Britain.

To extend over Great Britain.

[The schedule to this Act was repealed by 47 & 48 Vict. c. 43.]

THE HOSIERY ACT, 1843.

6 & 7 VICT. C. 40.

An Act to amend the Laws for the Prevention of Frauds and Abuses by Persons employed in the Woollen, Worsted, Linen, Cotton, Flax, Mohair and Silk Hosiery Manufactures, and for the further securing the Property of the Manufactures and the Wages of the Workmen engaged therein.
[1st August, 1843.]

[The preamble reciting several Acts since repealed and also the Frauds by Workmen Acts, 1748 and 1777, ante, was repealed by 54 & 55 Vict. c. 67.] Be it therefore enacted, by (&c. &c.), that from and after the commencement of this Act, so much of the said recited Acts or any of them as relates to the woollen, linen, cotton, flax, mohair and silk manufactures, or any of them, or any manufactures whatsoever made of wool, cotton, flax, mohair or silk materials, whether the same be or be not mixed with each other, or with any other materials, shall so far as respects the manufactures, trades, occupations and employment hereinafter mentioned, be and the same are hereby repealed save and except so far as the same may have repealed any former Acts or enactments.

So much of the said Acts as relates to the woollen, linen, cotton, flax, mohair and silk manufactures repealed.

2. If any person whosoever entrusted with any woollen, worsted, linen, cotton, flax, mohair or silk materials for the purpose of being prepared, worked up or manufactured either by himself or by any person or persons to be employed by or under him, or by himself jointly with any person or persons to be employed with, by or under him, or for any purpose or work connected with manufacture or incidental thereto, or any parts, branches or processes thereof, or any tools or apparatus for manufacturing the said materials, shall sell, pawn, purloin, embezzle, secrete, exchange or otherwise fraudulently dispose of the same materials, tools or apparatus, or any part thereof, he shall, upon being thereof lawfully convicted by the oath of the owner of such materials, tools or apparatus, or any part thereof, or of any other credible witness or witnesses before two or more justices of the peace, forfeit the full value of the same, and also forfeit such penalty not exceeding ten pounds, together with costs, as to the said justices shall seem meet; and every such forfeiture and penalty shall be applied under the direction of the convicting justices in manner

Persons convicted of pawning or embezzling any materials herein particularized to forfeit the value of the same with penalty and costs.

Application of penalty and forfeiture.

Commitment
in default of
sufficient
distress.

Persons neg-
lecting to
return ma-
terials within
a prescribed
time to be
subject to the
same punish-
ment as for
embezzlement.

Persons know-
ingly purchas-
ing or receiv-
ing embezzled
materials or
tools guilty of
a misde-
meanor,
punishable as
after men-
tioned.

Persons
knowingly
selling, &c.,
embezzled
materials or
tools guilty of
a misde-
meanor,
punishable
as after
mentioned.

following (that is to say), in the first place in making such satisfaction to the party injured as the said justices shall think proper, and the remainder, if any, shall be applied in the same manner as is hereinafter directed for the disposal of any other penalty under this Act; [*provision for distress warrant on non-payment, repealed by 47 & 48 Vict. c. 43*]; but if no sufficient distress shall appear or shall be found whereon to levy the said penalty, forfeiture and costs, the said justices may either immediately, or at any time after such conviction, commit any person so convicted to the common gaol or house of correction, to be there imprisoned with or without hard labour, as to the said justices shall seem meet. [*The rest of this section was repealed by 47 & 48 Vict. c. 43.*]

3. If any person whosoever entrusted with any woollen, worsted, linen, cotton, flax, mohair or silk materials for the purpose of being prepared, worked up or manufactured, either by himself or by any person or persons to be employed by or under him, or by himself jointly with any person or persons to be employed with, by or under him, or for any purpose or work connected with manufacture or incidental thereto, or any parts, branches or processes thereof, or with any tools or apparatus for manufacturing the said materials, shall neglect or delay to return the said materials, tools or apparatus, or any part thereof, for the space of fourteen clear days after being required so to do by the party entrusting him therewith, or by some person on his behalf, by notice in writing to be served upon or left at the last or usual place of abode or business of such person (unless prevented by some reasonable and sufficient cause to be allowed by the justices before whom he shall be brought), then and in every such case all or so much or so many of the said materials, tools or apparatus as shall not be returned to the person so entrusting him therewith within the time aforesaid shall be deemed to be embezzled by the person so neglecting or delaying to return the same; and the person so neglecting or delaying to return the same shall for every such offence be liable to be proceeded against for embezzlement in the same manner and subject to the same forfeiture and penalty with costs, and to be applied in the same manner, as are respectively hereinbefore prescribed and imposed in respect to persons selling, pawning, purloining, embezzling, secreting, exchanging or otherwise fraudulently disposing of the said materials.

4. Any person who shall purchase or take in pawn or who in any other way shall receive into his premises or possession any woollen, worsted, linen, cotton, flax, mohair or silk materials, and whether the same or any part of the said materials be or be not wholly or partially wrought, made up or manufactured into merchantable wares, or any tools or apparatus for manufacturing the same, knowing that such materials, tools or apparatus are purloined or embezzled or fraudulently disposed of, or that the person from whom he shall purchase, take in pawn, or receive the same is fraudulently or unlawfully disposing thereof, or knowing such person to be employed or entrusted by any other person or persons to work up, either by himself or by or with others, the material so purchased, taken in pawn, or received for any other person or persons, and not having first obtained the consent of the person or persons so employing or entrusting him therewith, shall, on conviction by the oath of the owner or of any other credible witness or witnesses, be deemed and adjudged guilty of a misdemeanor, and be punished in manner hereinafter mentioned.

5. If any person shall sell, pawn, pledge, exchange or otherwise unlawfully dispose of, or offer to sell, pawn, pledge, exchange or otherwise dispose of any such materials, tools or apparatus as aforesaid, knowing the same to have been so purloined or embezzled or received from persons fraudulently disposing thereof as aforesaid, he shall, on conviction by the oath of the owner of such materials, tools or apparatus, or any part thereof, or of any other credible witness or witnesses, be deemed and adjudged guilty of a misdemeanor, and be punished in manner hereinafter mentioned.

6. On proof on oath that there is just cause to suspect that any such materials, tools or apparatus as aforesaid have been fraudulently sold, pawned, pledged, purloined or embezzled by the person to whom the same were entrusted, or that any such materials, tools or apparatus have been purchased or received, or sold, pawned, pledged, exchanged or otherwise unlawfully disposed of or offered for sale, pawn, pledge, exchange or other disposal by any person knowing the same to have been purloined or embezzled, or received from some person fraudulently disposing thereof, it shall and may be lawful for any one justice of the peace, and such justice is hereby required to issue his warrant for apprehending any such person and bringing him before him or some other justice of the peace for examination; and if, upon such examination, the charge of having fraudulently sold, pawned, purloined, embezzled or otherwise fraudulently disposed of any such materials, tools or apparatus, or of having purchased, or received, or sold, pawned, pledged, exchanged, or otherwise fraudulently disposed of, or of having offered for sale, pawn, pledge, exchange or other disposal any such materials, tools or apparatus knowing them to have been purloined, or embezzled or received from some person fraudulently disposing thereof, shall be supported by evidence to raise a strong presumption of guilt, such justice shall commit such person to the common gaol or house of correction, in order that he may be brought forward for trial at the next petty sessions, unless he enter into such bail with two sufficient sureties as may be required for his appearance before such court on any day to be fixed by such justice.

[*Sect. 7 was repealed by 38 & 39 Vict. c. 86, s. 17.*]

8. Upon proof on oath before a justice of the peace, that there is reasonable cause to suspect that any person has in his possession or on his premises any such materials, tools or apparatus as aforesaid, which have been purloined, embezzled or otherwise fraudulently disposed of, it shall be lawful for the said justice, and such justice is hereby required to grant his warrant to search the dwelling-house and premises of such person, and if any such property shall be found therein to cause such materials, tools or apparatus, and the person in whose possession or on whose premises the same shall be found, to be brought before him or some other justice of the peace to be dealt with in the same manner as any person brought before a justice under the enactment next hereinafter contained.

9. Every peace officer and constable, and every watchman duly appointed by law, during such time as he shall be on duty, shall and may apprehend or cause to be apprehended any person whom he may reasonably suspect of having or carrying or in any way conveying, at any time after sunset and before sunrise, any such materials, tools or apparatus as aforesaid, suspected to be purloined, embezzled or otherwise fraudulently disposed of, and shall lodge such person, together with the property, in a police office or other place of security, in order that he may be brought before a justice of the peace as soon as convenient, who is hereby empowered to discharge such person, or to order his detention until the next court of petty sessions, unless he enter into such bail, with two sufficient sureties as may be required for his appearance before such court on any day to be fixed by the said justice, and if the person so apprehended in the act of committing any such offence as aforesaid, or of conveying any such property as last aforesaid, shall not produce before the said court the person duly entitled to dispose of such property from whom he bought or received the same, or shall not give an account to the satisfaction of the said court that the property is honestly come by, then the person so apprehended shall be deemed and adjudged guilty of a misdemeanor, and be punished in manner hereinafter mentioned, although no proof shall be given as to whom such property belongs.

10. It shall be competent for the party accused, in all proceedings

Justices empowered to issue warrant for apprehension of offenders against this Act, and to commit them for trial.

Justice empowered to grant search warrants.

Peace officers to apprehend suspected persons.

Person apprehended, and not proving that the property is honestly come by to be punishable.

Adjournment of time for

trial allowed
on prisoner
finding bail.

Punishment of
persons con-
victed of mis-
demeanor.

Disposal of
unclaimed
property
which has
been seized.

Owner of
materials may
inspect shops,
&c., of persons
employed.

Penalty for
refusal.

brought under the authority of this Act, to move for and obtain an adjournment of the time fixed for trial for such a reasonable time as may appear to the court to be necessary for the party accused to produce the person duly entitled to sell or dispose of the said property, of whom he bought or received the same, or evidence respecting the same, but the party accused and requesting such adjournment shall be detained in custody or committed to prison, unless he enter into such bail, with two sufficient sureties as shall be required for his appearance before such court, at such time and place as shall be appointed.

11. Any person who shall be deemed and adjudged guilty of a misdemeanor agreeably to any of the provisions of this Act, shall, in addition to being deprived, without compensation, of any such materials, tools and apparatus which have been purloined, embezzled or otherwise fraudulently disposed of, and which shall have been found in his possession, forfeit any sum not exceeding twenty pounds for each offence, together with costs, upon being thereof lawfully convicted, by the oath of one or more credible witness or witnesses, before two or more justices of the peace; and every such forfeiture shall be applied under the direction of the justices so convicting in manner following (that is to say), in the first place, in making such satisfaction to the party injured as the said justices shall think fit, and the remainder (if any) shall be applied in the same manner as is hereinafter directed for the disposal of any other penalty under this Act, [*provision for distress warrant on non-payment, repealed by 47 & 48 Vict. c. 43*]; but if no sufficient distress shall appear or shall be found whereon to levy the said forfeiture and costs, any justice or justices may either immediately, or at any time after such conviction, commit any person so convicted to the common gaol or house of correction, to be imprisoned there with or without hard labour, as to the said court shall seem meet. [*The rest of this section was repealed by 47 & 48 Vict. c. 43.*]

12. Where no proof shall be given, at the time of conviction, of the ownership of property found in the possession of a person convicted under this Act, the justices or court shall cause the property so found to be deposited in some safe place for any time not exceeding thirty days, and shall, if the property be of sufficient value to pay the expenses thereof, order an advertisement to be inserted in one or more of the public newspapers of the town or city where or nearest the place where the same was found and by fixing a notice on some public place, describing such property and where the same may be inspected, or in case of the said property not being of sufficient value to pay the said expenses, then by fixing such notices as aforesaid only; and in case any person shall prove his own or his employer's ownership of property therein, upon oath, to the satisfaction of a justice, restitution of such property shall be ordered to the owner thereof, after paying the reasonable cost of removing, depositing, advertising and giving notice of the same; but if no ownership be proved to such property, the justice shall, at the termination of thirty days, order such property to be sold, and after deducting the charges aforesaid with the charges of sale, shall order the residue to be applied in the same manner as is hereafter directed for the disposal of any other penalty under this Act.

13. It shall be lawful for the owner of any such material as aforesaid, or any other person duly authorized by him, or other the person who shall have so entrusted such materials from time to time as occasion shall require, to demand leave of entrance and enter, at all reasonable hours in the daytime, into the shops or outhouses of any person employed to work up or manufacture, either by himself or by any other person under him, any of the said materials, or other place or places where the work shall be carried on, and there to inspect the state and condition of such materials; and in case of refusal or neglect by any such person or persons so employed to permit such entrance or inspection, such person shall, for so refusing to permit such entrance or inspection, forfeit any

sum not exceeding twenty shillings as the justice before whom he shall appear or be brought, shall think proper, to be applied in the same manner as is hereinafter directed for the disposal of any other penalty under this Act: provided always, that nothing herein contained shall authorize any such owner or other person as aforesaid to inspect any frame, tools or apparatus wherewith such materials are worked up, in case such frame, tools or apparatus comprise any new invention or improvement not disclosed to the public.

14. If any manufacturer, agent or any other person in his employment or service, shall make oath before a justice of the peace that any such materials, tools and apparatus as aforesaid, have been entrusted to any person as aforesaid, and that he has absconded, or that the deponent has just cause to suspect and does suspect that such person is about to abscond, it shall be lawful for such justice, and he is hereby required to issue his warrant to apprehend such person and bring him before him or some other justice of the peace, and if such person shall have absconded, or shall not forthwith give security, to be approved of by the said justice, for the return, in a finished state, of all such materials so entrusted to him within such time as shall be then agreed on, such justice shall, by warrant, order any constable, with his assistants, to enter the house or other premises of such person and take possession of all such materials, tools or apparatus so delivered to him as aforesaid, and to bring the same before the said justice or any other justice, when such justice shall direct the same to be delivered to the owner, or his agent or servant, or other person duly authorized by him, and shall forthwith release the person in custody; but if all such materials, tools or apparatus shall not be found in the house or other premises or the possession of such person, or shall not be produced before such justice, such person shall be deemed and taken to have purloined or embezzled such materials, tools or apparatus, or such part thereof as shall not be found or produced, and shall be liable to any of the punishments awarded for such offence.

15. If any person shall receive any of the aforesaid materials in a fictitious name, in order to be manufactured, every such person so offending, and being convicted thereof on the oath of one or more credible witness or witnesses before two or more justices, shall, for every such offence, be liable to the same punishment as is hereinbefore directed in respect to persons not fulfilling their engagements.

16. In cases where any person shall have been committed for purloining, embezzling or fraudulently disposing of all or any part of such materials, tools or apparatus as aforesaid which may have been entrusted to him, or shall have been convicted of any other offence against any of the provisions of this Act, it shall be lawful for the justice who so committed such person or for any justice or court before whom he has been convicted for that or any other offence, and he or they is or are hereby required to issue his or their warrant authorizing a constable, with his assistants, to enter the house and premises of such person, and take possession of all such property so entrusted as shall be found therein, and to bring the same before the said justice or court, when the said justice or court shall direct the same to be delivered to the manufacturer, agent or person duly authorized to receive the same.

[Sect. 17 was repealed by 38 & 39 Vict. c. 86, s. 17, III. (f)]

18. No frame, loom or machine, materials, tools or apparatus which shall be entrusted for the purpose of being used or worked in any of the said manufactures, or any work connected therewith or incidental thereto, or any parts, branches or processes thereof, whether such frame, loom or machine, materials, tools or apparatus shall or shall not be rented or taken by the hire, shall at any time or times hereafter be distrained or seized or be liable to be distrained or seized for rent or for debt or under any execution or other proceedings whatever, unless the rent be due or the money be owing by the owner of the said frame, loom or

Proviso.

Warrant may be granted by justice on complaint on oath that person is about to abscond.

Receiving goods in fictitious name.

Justice to issue warrant to constable to take possession of property entrusted to any person committed for embezzlement, &c.

Frames, &c. not belonging to workmen not liable to be seized for rent or debt owing by workmen.

In case of refusal to restore frames, &c., unlawfully seized, justice may order their restoration.

machine, or of the said materials or tools or apparatus aforesaid, or of any part thereof respectively.

19. If any landlord or other person by virtue of any distress, warrant, execution or other proceedings for rent in arrear or money due or alleged to be due by any person whomsoever, shall distrain, seize, carry off, sell or otherwise dispose of any frame, loom or machine, materials, tools or apparatus belonging to any other person which shall have been entrusted for the purpose of being used or worked in any of the said manufactures, or any work connected therewith or incidental thereto, or any parts, branches or processes thereof, and whether the same shall or shall not be rented or taken by the hire, or shall distrain, seize, carry off, sell or otherwise dispose of any materials as aforesaid, or any tools or apparatus as aforesaid, belonging to any other person, and shall refuse to restore possession of all such frames, looms, machines, tools or apparatus to the person owning, letting or entrusting the same when demanded by him or some person duly authorized by him of the said landlord or other person or the person acting as agent or bailiff of such landlord or other person, it shall and may be lawful to and for any justice of the peace, upon complaint on oath before him, to summon the said landlord or other person to appear before any two or more justices of the peace to answer the said complaint, and, on proof of the said offence, the said justices may thereupon order the property so seized, distrained, carried off or sold, to be forthwith restored, and issue their warrant to a constable or constables empowering him or them to seize the said property wherever the same shall be found, and deliver possession thereof to the person owning, letting or entrusting the same, and to levy by distress and sale of the goods of the said landlord or other person the costs of obtaining the said order and recovering and obtaining possession of the said property: and in case the said property cannot be found and seized within a time not exceeding twenty-one days, to be limited in the said warrant, or in case the said property shall have been damaged by the same having been distrained, seized, carried off or sold, then it shall be lawful for such two justices or any other two justices, on proof thereof (the said landlord or other person having been first summoned by a justice) to issue their warrant to levy by distress and sale of the goods and chattels of such landlord or other person the full value of the said property or the amount of such damage as the case may be, together with all costs of recovering and levying the same.

Penalty for obliterating mark of machine.

20. If any person or persons shall obliterate, efface or alter the owner's name or initials, or other distinguishing mark on any frame, loom or machine, or any bar or part thereof, or the moulds thereof, without the order or authority of the owner thereof, he shall, on conviction thereof before two justices of the peace, forfeit any such sum not exceeding two pounds as such two justices shall order and direct, to be applied in the first place in paying the costs of the proceedings before such justices, and the surplus, if any, to the party injured: and in default of payment of such forfeiture immediately on conviction or within such period as the justices so convicting shall direct, then the said justices may either immediately or at any time after such conviction commit any person so convicted to the common gaol or house of correction, there to be imprisoned with or without hard labour as to the said justices shall seem meet. [*The rest of the section was repealed by 47 & 48 Vict. c. 43.*]

Power to award costs to defendant.

21. It shall be lawful for any justices or court of petty sessions before whom any case under this Act is tried to award costs to the defendant with an allowance for his loss of time in case of acquittal, to be paid by the prosecutor, and also if it shall appear to such justices or court that the charge was made from a malicious, vexatious or frivolous motive, or in case the party shall be charged with embezzlement of materials by reason of any deficiency in the weight of the materials which he shall have returned to the person by whom they were entrusted to such party

as compared with the weight of the materials received, and it shall be proved upon the hearing of the case that such materials were knowingly and fraudulently delivered to the party charged whilst in a damp state, so that the apparent weight thereof was thereby increased, it shall be lawful for such justices or court to award to the defendant such further sum of money not exceeding twenty pounds as to such justices or court shall seem fit, to be paid by such prosecutor as a compensation for the injury done: and, in default of payment, such costs and allowances and compensations may be levied by distress and sale of the prosecutor's goods.

[*Seets. 22 and 23 were repealed by 47 & 48 Vict. c. 43.*]

24. Provided always, that every complaint and prosecution under this Act shall be commenced within six calendar months after the commission of the offence, unless the offending party shall have in the meantime left the country and not otherwise. [*The rest of this section was repealed by 47 & 48 Vict. c. 43. See also 37 & 38 Vict. c. 96.*]

25. In all complaints, warrants, proceedings or prosecutions under this Act any justice or justices of the peace and the court of petty sessions for the county, city, borough or place where the offence shall be committed, or the complaint arise, or where the said materials, frame, loom, machine, tools or apparatus shall be given out or intrusted, lent or hired, or where the manufacturer, master or employer shall carry on his trade or business, shall have full power and authority to act and to hear and determine such complaint, warrant, proceeding or prosecution, and do all other matters incident thereto: provided always, that in all convictions or adjudications under this Act one at least of the convicting or adjudicating justices shall be a person not engaged in any manufacture, trade, occupation or employment to which this Act extends, and shall not be the father, son or brother of any such person.

26. All forfeitures and penalties upon conviction under this Act not specially provided for shall be paid to the sheriff or other proper officer of the county, city, borough or place in which such conviction shall take place for her Majesty's use, and shall be returned to the court of quarter sessions under the provisions of an Act passed in the 3 Geo. 4, intitled "An Act for the more speedy Return and Levying of Fines, Penalties and Forfeitures, and Recognizances estreated."

27. In every case of summary conviction or adjudication under this Act not specially provided for, where the sum forfeited or adjudged to be paid, or which shall be imposed as a penalty by any justice or justices of the peace, together with costs, if awarded, which costs such justice or justices is and are hereby authorized to award if he or they shall think fit in any proceeding, adjudication or conviction under this Act, shall not be paid immediately, or within such period as the said justice or justices shall direct, or where a warrant of distress shall be issued and no sufficient distress shall be found, it shall be lawful for the convicting justice or justices to commit the offender to the common gaol or house of correction, there to be imprisoned with or without hard labour, according to the discretion of the said justice or justices. [*The rest of this section was repealed by 47 & 48 Vict. c. 43.*]

[*Seet. 28 was repealed by 47 & 48 Vict. c. 43.*]

29. In all cases of summary conviction under this Act where the sum adjudged to be paid shall exceed twenty shillings, or the imprisonment shall exceed one calendar month, any person who shall think himself aggrieved by any such conviction may appeal to the next court of general or quarter sessions. [*The rest of this section was repealed by 47 & 48 Vict. c. 43.*]

30. No order or conviction, or proceedings touching the same respectively, nor adjudication made or appeal therefrom shall be quashed for want of form or be removed by *certiorari* or otherwise into any of her Majesty's superior courts of record. [*The rest of this section was repealed by 47 & 48 Vict. c. 43.*]

Limitation of time within which proceedings to be commenced.

What justices to have jurisdiction.

Proviso.

Application of penalties.

3 Geo. 4, c. 46.

Scale of imprisonment on summary convictions not specially provided for.

Appeal to quarter sessions in certain cases.

Proceedings not to be quashed for want of form, or removed by *certiorari*.

31 (*x*). Provided always, that in all such actions of (*y*) damages the plaintiff shall be bound to establish not merely that damages have been suffered by him, but that the same have been wilfully and maliciously caused by the defendant or avowant.

[*Sect. 32 was repealed by 37 & 38 Vict. c. 96.*]

This Act not to extend to Scotland or Ireland.

To what trades this Act shall extend.

33. Nothing in this Act contained shall extend to Scotland or Ireland or be construed to extend to repeal any Act or statute or part thereof now in force and not repealed by this Act.

34. This Act shall not extend or be construed to extend to any manufacture, trade, occupation or employment, except only the manufactures (*z*), trades, occupations and employments following (that is to say), the manufacture of woollen, worsted, linen, cotton, flax, mohair or silk materials in, on or by the stocking frame, warp machine or any other machine employed in the manufacture of framework knitted or looped fabrics, and every trade, occupation, operation or employment whatsoever connected with or incidental to the manufacture of stockings, gloves, and other articles of hosiery.

Construction of terms.

35. In all cases under this Act the singular is to include the plural, and the masculine the feminine, and in an indictment or information for offences against the property of partners, joint stock companies or trustees, it shall be sufficient to lay the ownership in the name of one partner or trustee and another or others; the words "*woollen, worsted, linen, cotton, flax, mohair or silk materials,*" shall be construed to extend to any of the said materials mixed with each other or with any other material or materials; and the words "*manufacture*" and "*work*" shall extend to all trades, occupations, operations and employments whatsoever connected with or incidental to the manufacture of any of the said materials or any parts, branches or processes thereof, and likewise to such materials whether the same or any part thereof be or be not, in the whole or in part, first wrought, made up or manufactured, or converted into merchantable wares.

[*Sections 36 and 37 were repealed by 37 & 38 Vict. c. 96.*]

THE HOSIERY ACT, 1845.

8 & 9 VICT. c. 77.

An Act to make further Regulations respecting the Tickets of Work to be delivered to Persons employed in the Manufacture of Hosiery in certain Cases.

[4th August, 1845.]

Manufacturer to deliver with materials a ticket of work.

[*The preamble reciting the now repealed Act of 5 Geo. 4, c. 96, was repealed by the Statute Law Revision Act, 1891.*] Be it therefore enacted by, &c. &c., that when any manufacturer of hosiery, or the agent of any such manufacturer, gives out to a workman the materials to be wrought, such manufacturer or agent shall at the same time deliver to such workman a printed or written ticket, signed by such manufacturer, containing the particulars of the agreement between such

(*x*) The first part of this section, providing a limitation of actions against persons acting in execution of this Act, was repealed by the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), which contains now the statutory law on this subject.

(*y*) *Sic.*

(*z*) See *R. v. Button*, 11 Q. B. 941.

manufacturer and such workman, as in the schedule to this Act annexed; and such manufacturer or agent delivering such ticket shall make or cause to be made, and shall preserve until the work contracted to be done shall have been completed or paid for, a duplicate of such note or ticket.

2. In the event of any dispute between the manufacturer or his agent and the workman, such ticket, and the said duplicate thereof, shall be required to be produced, and shall, together or either of them, be evidence of all things mentioned therein or respecting the same.

3. Provided always, that where the subject of dispute relates to the alleged improper or imperfect execution of any work delivered to a manufacturer or his agent, such piece of work shall be produced in order to adjudication, or if not produced, shall be deemed and taken to have been sufficiently and properly executed.

4. If any manufacturer or agent shall neglect or refuse to deliver such ticket to such workman as aforesaid, with the materials so given out, and if such workman shall complain thereof to any justice of the peace having jurisdiction in the place where the materials shall have been delivered out, or where the workman shall reside, such justice may summon such manufacturer or agent to attend before two justices at a time or place appointed for hearing the complaint, and set forth in the summons; and if the person to whom such summons so directed appears according to the tenor thereof, or if he does not appear, and the due service of the summons is proved, the said justices may proceed to hear and determine the complaint: and if such neglect or refusal as aforesaid be proved, either by the confession of the party complained against, or by the oath of the complainant, or of any other credible witness or witnesses, such justices may convict such offender, and may, upon conviction, adjudge him to pay such penalty not exceeding five pounds together with the costs attending the conviction, as such justices shall think fit, and the party so adjudged to pay such penalty and costs shall pay the same accordingly; *provided always*, that in all convictions of adjudications under this Act, one at least of the convicting or adjudicating justices shall be a person not engaged in any manufacture, trade, occupation, or employment to which this Act extends, and shall not be the father, son or brother of any such person.

[*Sects. 5, 6 and part of 7 were repealed by 47 & 48 Vict. c. 43.*]

7. . . . and the said penalty shall be paid over to the sheriff or other proper officer of the county, city, borough, or place in which such conviction shall take place, for her Majesty's use, and shall be returned to the court of quarter sessions, under the provisions of an Act passed 3 Geo. 4, intitled "An Act for the more speedy Return and Levying of Fines, Penalties, and Forfeitures, and Recognizances estreated."

8. No order or conviction, or proceeding touching the same respectively, shall be quashed for want of form, or be removed by *certiorari* or otherwise into any of her Majesty's superior courts of record. [*The rest of this section was repealed by 47 & 48 Vict. c. 43.*]

9. The word "manufacturer" in this Act shall be understood to mean any person furnishing the materials or work to be wrought into hosiery goods, to be sold or disposed of on his own account, and the word "agent" to include any person conveying or delivering the same to the workman, and the word "workman" any person actually employed in the manufacture of the same.

[*Sect. 10 was repealed by 38 & 39 Vict. c. 66.*]

SCHEDULE.

If the material to be manufactured be into stockings:

- Gauge.
- Ribbed or plain
- What kind of material.

Ticket to be evidence.

When dispute arises as to imperfect execution the work to be produced.

Penalty on manufacturer for non-delivery of ticket.

Application of penalty.

3 Geo. 4, c. 46.

No *certiorari* allowed, nor order unlawful for want of form.

Interpretation of Act.

Size.
 Jacks in width.
 Mark.
 Length of leg.
 Length of foot.
 Narrowings in leg.
 Narrowings in heel.
 Narrowings in gusset.
 Narrowings in toe.
 Dumps or clocks.
 Bound heels or toes.
 Wrought heels or cut.
 Wrought feet or cut.
 Turnings in leg.
 Welte'd or not.
 Weight per dozen.
 Price per dozen pair of making legs.
 Price per dozen pair of making feet.
 Name of party putting out the work.
 Name of artificer.

If the material to be manufactured be into socks :

Gauge.
 Ribbed or plain.
 What kind of material.
 Size.
 Jacks in width.
 Mark.
 Length of leg with top.
 Length of foot.
 Narrowings in heel.
 Narrowings in gusset.
 Narrowings in toe.
 Cut or wrought heels.
 Cut or wrought feet.
 Price per dozen pair.
 Name of party putting out the work.
 Name of artificer.

If the material to be manufactured be into gloves :

Gauge.
 Ribbed or plain.
 What kind of material.
 Size.
 Jacks in width of hand.
 Jacks in width of finger.
 Mark.
 Length of hand.
 Length of finger.
 What kind of welts.
 Planted or not.
 What figure in back of hand.
 Weight per dozen.
 Price per dozen pair of making hands.
 Price per dozen pair of making fingers.
 Name of party putting out the work.
 Name of artificer.

If the material to be manufactured be into shirts :

Gauge.
 Ribbed or plain.
 What kind of material.
 Size.
 Jacks in width of body.

Jacks in width of sleeve.

Mark.

Length of body.

Length of sleeve.

Fashioned or not.

Wetted or not.

Weight per dozen.

Price per dozen of making bodies.

Price per dozen pair of making sleeves.

Name of party putting out the work.

Name of artificer.

If the material to be manufactured be into caps :

Gauge.

Ribbed or plain.

Material.

Jacks in width.

Fashion.

Striped or plain.

Weight per dozen.

Price per dozen.

Name of party putting out the work.

Name of artificer.

If the material to be manufactured be into any other description of hosiery :

Gauge.

Length.

Width.

Weight.

Price.

Fashion.

Name of party putting out the work.

Name of artificer.

THE SILK WEAVERS ACT, 1845.

8 & 9 VICT. c. 128.

An Act to make further Regulations respecting the Tickets of Work to be delivered to Silk Weavers in certain Cases.

[9th August, 1845.]

[*The preamble reciting the now repealed Act of 5 Geo. 4, c. 96, was repealed by the Statute Law Revision Act, 1891.*] Be it therefore enacted by (&c. &c.), that when any manufacturer of silk goods or of goods made of silk mixed with other materials, or the agent of any such manufacturer, gives out to a weaver of such goods a piece of warp to be woven, such manufacturer or agent shall at the same time deliver to such weaver (unless both parties shall by writing under their respective hands agree to dispense therewith) a printed or written ticket signed by such manufacturer or agent containing the following particulars of the agreement between such manufacturer or agent and such weaver (that is to say) :

Manufacturer to deliver with warp a ticket of work.

The count or richness of the warp or cane :

The number of shoots or picks required in each inch :

The number of threads of weft to be used in each shoot :

The name of the manufacturer, or the style of the firm under which he carries on business :

The weaver's name, with the date of the engagement :

And the price in sterling money agreed on for executing each yard

imperial standard measure of thirty-six inches of such work in a workmanlike manner :

And such manufacturer or agent delivering such ticket shall make or cause to be made, and shall preserve until the work contracted to be done shall have been completed or paid for, a duplicate of such note or ticket.

Ticket to
be evidence
in cases of
dispute ;

and work to
be produced
in order to
adjudication.

2. In the event of any dispute between the manufacturer or his agent and the workmen, such ticket and the said duplicate thereof shall be required to be produced, and shall, together or either of them, be evidence of all things mentioned therein or respecting the same.

3. Provided always, that where the subject of dispute relates to the alleged improper or imperfect execution of any work delivered to any manufacturer or his agent, such piece of work shall be produced, in order to adjudication, or if not produced, shall be deemed and taken to have been sufficiently and properly executed.

[*Sects. 1 and 5 were repealed by the Statute Law Revision Act, 1892.*]

6. [*Provision for distress warrant on non-payment of penalty, repealed by the Statute Law Revision Act, 1892.*] The said penalty shall be paid over to the sheriff or other proper officer of the county, city, borough or place in which such conviction shall take place, for her Majesty's use, and shall be returned to the court of quarter sessions, under the provisions of an Act passed in 3 Geo. 4, intitled "An Act for the more speedy Return and Levying of Fines, Penalties and Forfeitures, and Recognizances estreated."

3 Geo. 4, c. 46.

No certiorari
to be allowed.

[*Sect. 7 was repealed by 38 & 39 Vict. c. 86, s. 17, III. (g).*]

8. No order or conviction or proceeding touching the same respectively shall be quashed for want of form or be removed by *certiorari* or otherwise into any of her Majesty's superior courts of record. [*The rest of the section was repealed by the Statute Law Revision Act, 1892.*]

[*Sect. 9 was repealed by 38 & 39 Vict. c. 66.*]

THE POOR LAW (APPRENTICES, ETC.) ACT, 1851.

14 & 15 VICT. c. 11.

An Act for the better Protection of Persons under the Care and Control of others as Apprentices or Servants ; and to enable the Guardians and Overseers of the Poor to institute and conduct Prosecutions in certain Cases (a).

[20th May, 1851.]

Whereas it is expedient to make provision for the better production of persons who are under the care and control of others as apprentices or servants : be it therefore enacted by (&c. &c.) :

[*Sects. 1, 2, 6 and 7 were repealed by 24 & 25 Vict. c. 95 ; but their provisions were substantially re-enacted by sects. 26 and 73 of 24 & 25 Vict. c. 100, post, p. 540.*]

A register to
be kept of
young persons
hired or taken
as servants
from any
workhouse.

3. The guardians of every union and of every separate parish under the management of a board of guardians, and the overseers of every parish not in union or under the management of a board of guardians, shall provide and keep a book or books, and shall cause to be registered therein the name of every young person under the age of sixteen who shall thereafter be hired or taken as a servant from the workhouse of

(a) See *ante*, p. 190, and *post*, p. 540.

such union or parish, together with the several other particulars specified in the schedule hereunto annexed; and every such entry shall be signed by the presiding chairman of such board of guardians at an ordinary meeting thereof, or by some one of such overseers; *provided* that nothing herein contained shall be taken to supersede or affect the obligation to keep such register of poor children apprenticed by overseers or guardians as is required by the statute of the 42nd Geo. 3, c. 46, and the statute of the 8th Vict. c. 101.

4. Where any young person under the age of sixteen shall have been or shall be hired or taken as a servant from the workhouse of any union or parish, or shall have been or shall be bound out as an apprentice by the guardians of any union, or the guardians or overseers of any parish, it shall be lawful for such guardians or overseers respectively, and they are hereby required, so long as such young person shall be under the age of sixteen, and shall be known to them to reside as servant or apprentice in the same service into which such young person shall have so gone as a servant from such workhouse or as such apprentice within such union or parish respectively, or within five miles of any part of such union or parish, to cause the relieving officer, or, where there is no relieving officer, then some other officer duly authorized for the purpose, to visit such young person at least twice in every year, and to report to them in writing whether he has found reason to believe that such young person is not supplied with necessary food, or is subjected to cruel or illegal treatment in any respect.

5. Where any young person under the age of sixteen shall hereafter be hired or taken as a servant from the workhouse of any union or parish, or shall be bound out as an apprentice by the guardians of any union, or by the guardians or overseers of any parish, and the residence of the master or mistress shall be more than five miles from any part of such union or parish, then a written notice of such hiring, taking or binding, specifying the name and age of the apprentice or servant, and the name, description and residence of such master or mistress, shall be forthwith sent from such guardians or overseers to the guardians or overseers of the union or parish in which such master or mistress shall reside; and thereupon it shall become the duty of such last-mentioned guardians or overseers to cause the particulars contained in such notice to be registered in some book or books, to be provided by them for the purpose, together with the name of the union or parish from which such notice shall have been received; and such last-mentioned guardians or overseers shall cause such young person to be visited as frequently and in the same manner in all respects as if such young person had been hired or taken from their own workhouse, or had been bound out as an apprentice by themselves.

[*Sects. 6 and 7 are repealed. See note to sect. 1.*]

8. The words "guardians," "union," "overseers," "justice of the peace," "officer," "poor," "parish" and "workhouse," used in this Act shall be construed in like manner as in the Act of the 5th Will. 4, c. 76.

9. This Act shall extend only to England and Wales.

Not to supersede obligation to keep register as required by 42 Geo. 3, c. 46, and 7 & 8 Vict. c. 101.

Young persons hired from workhouses or bound out as pauper apprentices to be visited periodically by officer of guardians or overseers.

As to young persons hired or bound to masters residing at a distance from unions or parishes.

Interpretation of terms.

Extent of Act.

SCHEDULE.

FORM OF REGISTER.

Name of Child.	Age.	Date of hiring or taking as Servant.	Name of Master or Mistress.	Trade or other description of Master Mistress.	Residence of Master or Mistress.

OFFENCES AGAINST THE PERSON ACT, 1861.

24 & 25 VICT. c. 100.

Not providing apprentices or servants with food, &c. whereby life endangered.

Sect. 26. Whosoever being legally liable either as a master or mistress to provide for any apprentice or servant necessary food, clothing or lodging, shall wilfully and without lawful excuse refuse or neglect to provide the same, or shall unlawfully and maliciously do or cause to be done any bodily harm to any such apprentice or servant, so that the life of such apprentice or servant shall be endangered, or the health of such apprentice or servant shall have been or shall be likely to be permanently injured, shall be guilty of a misdemeanor (*b*), and being convicted thereof shall be liable to be kept in penal servitude for the term of [three years; see sect. 1 of the Penal Servitude Act, 1891 (54 & 55 Vict. c. 69)].

Guardians and overseers may be required to prosecute in certain cases of offences against this Act.

73. Where any complaint shall be made of any offence against sect. 26 of this Act, or of any bodily injury inflicted upon any person under the age of sixteen years, for which the party committing it is liable to be indicted, and the circumstances of which offence amount in point of law to a felony or an attempt to commit a felony, and two justices of the peace before whom such complaint is heard shall certify under their hands that it is necessary for the purposes of public justice that the prosecution should be conducted by the guardians of the union or place, or where there are no guardians, by the overseers of the poor of the place in which the offence shall be charged to have been committed, such guardians or overseers as the case may be, upon personal service of such certificate or a duplicate thereof, upon the clerk of such guardians or upon any one of such overseers, shall conduct the prosecution, and shall

(*b*) The Conspiracy and Protection of Property Act, 1875, *post*, provides by sect. 6 a summary remedy for offences similar to those mentioned in this section. Sect. 1 of the Prevention of Cruelty to Children Act, 1894, *post*, also provides for the punishment of any person who, having custody, charge, or care of a child under the age of sixteen, shall wilfully assault, ill-treat, or neglect it.

pay the costs reasonably and properly incurred by them therein (so far as the same shall not be allowed to them under any order of the court) out of the common fund of the union, or out of the funds in the hands of the guardians or overseers as the case may be, and where there is a board of guardians, the clerk or some other officer of the union or place, and where there is no board of guardians one of the overseers of the poor may, if such justices think it necessary for the purposes of public justice, be bound over to prosecute.

77. The court before which any misdemeanor indictable under the provisions of this Act shall be prosecuted or tried, may allow the costs of the prosecution in the same manner as in cases of felony, and every order for the payment of such costs shall be made out, and the sum of money mentioned therein paid and repaid upon the same terms and in the same manner in all respects as in cases of felony.

Costs of prosecution.

Clerk of guardians may be bound over to prosecute.

Costs of prosecution may be allowed.

THE MISAPPROPRIATION BY SERVANTS ACT, 1863.

26 & 27 VICT. c. 103.

An Act to amend the Law in certain Cases of Misappropriation by Servants of the Property of their Masters.

[28th July, 1863.]

Whereas the offence of taking corn or other food by a servant from the possession of his master, contrary to his orders, for the purpose of giving the same or of having the same given to the horses or other animals of such master, is by law a felony (c): and whereas it is desirable to alter the law in this respect: be it enacted by (&c. &c.), as follows:

1. If any person shall, contrary to the orders of his master, take from his possession any corn, pulse, roots or other food, for the purpose of giving the same or of having the same given to any horse or other animal belonging to or in the possession of his master, the servant so offending shall not by reason thereof be deemed guilty of or be proceeded against for felony, but shall, on conviction of such offence before two justices of the peace, at their discretion, either be imprisoned, with or without hard labour, for any term not exceeding three months, or else shall forfeit and pay such penalty as shall appear to them to be meet, not exceeding the sum of five pounds, and if such penalty shall not be paid, either immediately after the conviction, or within such period as the said justices shall at the time of the conviction appoint, the servant so offending shall be imprisoned, with or without hard labour, [for any term not exceeding three months, unless such penalty be sooner paid (d)]: provided always, that if upon the hearing of the charge the said justices shall be of opinion that the same is too trifling, or that there are circumstances in the case which render it inexpedient to inflict any punishment, they shall have power to dismiss the charge, without proceeding to a conviction: provided also, that if upon the trial of any servant for feloniously taking from his master any corn, pulse, roots or other food consumable by horses or other animals, such servant shall allege that he took the same under such circumstances as would constitute an offence punishable under this Act, and thereof shall satisfy the

Servants taking their master's corn, &c. without authority, for the purpose of giving the same to their master's horses, &c. not guilty of felony, but shall be liable to imprisonment, &c.

Power to justice to dismiss case if deemed too trifling.

(c) See *ante*, p. 434.

(d) The words in brackets were repealed by 47 & 48 Vict. c. 43.

jury charged with his trial, then it shall be lawful for such jury to return a verdict accordingly; and thereupon the court before which such trial shall take place shall proceed to award such punishment against such servant as may be awarded by two justices of the peace on the conviction of any person under the provisions of this Act; *provided also*, that in case of non-payment of any penalty to be imposed by the court on such servant, he shall be imprisoned, with or without hard labour, for any term not exceeding three months, as the court shall order, unless such penalty be sooner paid.

Power to
appeal against
conviction.

2. Provided always, that if any person shall think himself aggrieved by any conviction under this Act, such person may appeal to the next court of general quarter sessions of the peace [*proviso for notice of appeal, repealed by 47 & 48 Vict. c. 43*], and upon such notice being given, and such recognizance being entered into, or such deposit being made, the justices before whom such recognizance shall be entered into or such deposit shall be made shall liberate such person, if in custody; [*the rest of this section was repealed by 47 & 48 Vict. c. 43, down to*] provided that the right of appeal against any conviction under this Act shall not apply so as to enable any person to appeal against any verdict of a jury as aforesaid.

No *certiorari*,
&c.

3. No such conviction, or adjudication made on appeal therefrom, shall be quashed for want of form, or be removed by *certiorari* into any of her Majesty's superior courts of record. [*The rest of this section was repealed by 47 & 48 Vict. c. 43.*]

Summary
proceedings
may be under
11 & 12 Vict.
c. 43.

4. Every offence under this Act may be prosecuted and every conviction under this Act may be enforced in the manner directed by the Act 11 & 12 Vict. c. 43; and all provisions contained in the said Act shall, unless repugnant to any of the provisions of this Act, be applicable to such prosecution and conviction, in the same manner as if they were incorporated in this Act: provided that nothing in this Act contained shall in any manner alter or affect any enactments relating to procedure in the case of any offence punishable on summary conviction within the city of London or the metropolitan police district, or the recovery or application of any penalty for any such offence.

Except in
London and
the metro-
politan police
district.

5. This Act shall extend to England only.

Extent of Act.
Commence-
ment of Act.

6. This Act shall commence and take effect from the 1st day of September, 1863.

THE AGRICULTURAL GANGS ACT, 1867.

30 & 31 VICT. c. 130.

An Act for the Regulation of Agricultural Gangs.

[20th August, 1867.]

Whereas (c) in certain counties in England certain persons known as gangmasters hire children, young persons, and women with a view to contracting with farmers and others for the execution on their lands of various kinds of agricultural work; and whereas it is expedient to make regulations with respect to the employment of children, young persons, and women by gangmasters:

Be it enacted by, &c. &c., as follows:

Short title.

1. This Act may be cited for all purposes as "The Agricultural Gangs Act, 1867."

Commence-
ment of Act.

2. This Act shall come into operation on the 1st of January, 1868.

3. The following words and expressions shall in this Act have the

(c) This preamble was repealed by the Statute Law Revision Act, 1893.

meanings hereby assigned to them, unless there is something in the context inconsistent with such meanings; that is to say, Definition of terms.

“Child” shall mean a child under the age of thirteen years :

“Young person” shall mean a person of the age of thirteen years and under the age of eighteen years :

“Woman” shall mean a female of the age of thirteen years or upwards :

“Gangmaster” shall mean any person, whether male or female, who hires children, young persons, or women with a view to their being employed in agricultural labour on lands not in his own occupation; and, until the contrary is proved, any children, young persons, or women employed in agricultural labour on lands not in the occupation of the person who hired them shall be deemed to have been hired with the aforesaid view :

“Agricultural gang” shall mean a body of children, young persons, and women, or any of them, under the control of a gangmaster :

4. The following regulations shall be observed by every gangmaster with respect to the employment of children, young persons, and women : Regulations as to gangs.

(1.) *No child under the age of eight years shall be employed in any agricultural gang (f) :*

(2.) No females shall be employed in the same agricultural gang with males :

(3.) No female shall be employed in any gang under any male gangmaster unless a female licensed to act as gangmaster is also present with that gang :

And any gangmaster employing any child, young person, or woman in contravention of this section, and any occupier of land on which such employment takes place, unless he proves that it took place without his knowledge, shall respectively be liable to a penalty not exceeding twenty shillings for each child, young person, or woman so employed.

5. No person shall act as a gangmaster unless he has obtained a licence to act as such under this Act.

Gangmasters to be licensed.

Any person acting as a gangmaster without a licence under this Act shall incur a penalty not exceeding twenty shillings for every day during which he so acts.

6. No licence shall be granted to any person who is licensed to sell beer, spirits, or any other exciseable liquor.

7. Licences to gangmasters shall be granted by two or more justices in divisional petty sessions (g), on due proof to the satisfaction of such justices that the applicant for a licence is of good character, and a fit person to be entrusted with the management of an agricultural gang.

Licences not to be granted to keepers of public-houses.

The justices shall annex to their licence a condition limiting, in such manner as they think expedient, the distance, within which the children employed by such gangmaster are to be allowed to travel on foot to their work, and any gangmaster violating the condition so annexed to his licence shall for each offence be liable to a penalty not exceeding ten shillings.

Licences to gangmasters

Any person aggrieved by the refusal of the justices to grant him a licence to act as gangmaster may appeal to the next practicable court of general or quarter sessions; and it shall be lawful for such court, if they see cause, to grant a licence to the applicant, which shall be of the same validity as if it had been granted by the justices in petty sessions.

(f) By 36 & 37 Vict. c. 67, s. 16, the words in italics were repealed and ten years substituted for eight. But that Act was repealed by 39 & 40 Vict. c. 79, s. 52, which Act prohibits the employment of children under ten.

(g) The powers of justices out of session in relation to the licensing of gangmasters, when arising within a county district, were transferred to the district council of the district by sect. 27 of the Local Government Act, 1894 (56 & 57 Vict. c. 73).

Renewal of
licences.

8. Licences under this Act shall be in force for six months only, and may be renewed on similar proof to that on which an original licence is granted.

Fees in respect
of licences.

9. There shall be charged in respect of each grant or renewal of licence a fee of one shilling, and such fee shall be accounted for and applied in manner in which the fees ordinarily received by the authority granting the licence are applicable.

Licence how
affected by
conviction of
gangmaster.

10. On any conviction of a gangmaster of any offence against this Act the justices who convict him shall endorse on his licence the fact of such conviction; and on any conviction of such gangmaster of a second offence against this Act the justices may, in addition to any other penalty, withhold his licence for a period not exceeding three months; and on any conviction of any gangmaster of a third offence against this Act the justices may, in addition to any other penalty, withhold his licence for a period not exceeding two years.

And after a fourth conviction for an offence against this Act the gangmaster shall be disqualified from holding or receiving a licence under this Act.

Recovery of
penalties.

11. All penalties under this Act may be recovered summarily before two or more justices in manner directed by an Act passed 11 & 12 Vict. c. 43, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders," or any Act amending the same.

11 & 12 Vict.
c. 43.

Extent of Act.

12. This Act shall not apply to Scotland or Ireland.

TAX ON MALE SERVANTS.

By the Revenue Act, 1869 (32 & 33 Vict. c. 14), whereby a duty of 15s. was granted "for every male servant" (*h*), it is enacted:

Sect. 19. The provisions and regulations contained in this section shall be observed, viz.:

- (1) It shall not be necessary for any member of the royal family to make any declaration or to take out any licence under this Act, nor shall it be necessary for the sheriff of any county, or mayor or other officer in any corporation or royal burgh serving an annual office therein, to take out a licence for any servants, carriages, or horses employed or kept by him for the purpose of his office during his year of service.
- (2) It shall not be necessary for any person ordinarily residing in Ireland and being a representative peer on the part of Ireland, or a member of the House of Commons and not residing in Great Britain longer than during the session of parliament, and forty days before and forty days after the session, or for any person ordinarily residing in Ireland and residing in Great Britain by the order or direction of the Lord Lieutenant for the time being, or of his chief secretary for the purpose of public business, to make any declaration, or to take out any licence under this Act in respect of any servants, carriages, horses or mules, or armorial bearings employed, kept or used by him, save in respect of any subject matter of duty, which shall be employed, kept or used by such person in Great Britain during his residence in Ireland.

(*h*) Sect. 27 provides a penalty of 20*l*. for every person who employs a male servant without a proper licence under this Act, or who shall employ a greater number of male servants than he shall be authorized by his licence to employ.

As to Male Servants.

- (3.) The term "male servant" (*i*) means and includes any male servant employed, either wholly or partially, in any of the following capacities ; that is to say, maître d'hôtel, house-steward, master of the horse, groom of the chambers, valet de chambre, butler, under-butler, clerk of the kitchen, confectioner, cook, house-porter, footman, page, waiter, coachman, groom, postilion, stable boy or helper in the stables, gardener, under-gardener, park-keeper, gamekeeper, under-gamekeeper, huntsman and whipper-in, or in any capacity involving the duties of any of the above descriptions of servants, by whatever style the person acting in such capacity may be called.
- (4.) Every person who shall furnish any male servant on hire shall, for the purposes of this Act, be deemed to be the employer of such servant.
- (5.) It shall not be necessary for licences to be taken out in the following cases, viz. :

By any officer in her Majesty's army or navy, for any servant being a soldier in the army, or a person actually borne upon the books of a ship and employed by such officer in accordance with the regulations of her Majesty's service :

By any licensed retailer of exciseable liquors, or licensed keeper of a refreshment house, for any servant employed by him solely for the purposes of his business, such servant being the only male servant employed by him :

By any person who shall have made entry of his premises in accordance with sect. 28 of this Act (*j*), for any servant employed by him at such premises in the course of his trade, other than a servant employed to drive a carriage with any horse let to hire for any period exceeding twenty-eight days : provided that such person shall have complied with all the provisions contained in the said section :

By any person duly licensed by proper authority to keep or use any public stage or hackney carriage, for any servant necessarily employed by him to drive such stage or hackney carriage, or in the case of such stage or hackney carriage, or of the horse or horses kept and used by him to draw the same.

(*i*) By 39 & 40 Vict. c. 16, s. 5, the term "male servant," as used in 32 & 33 Vict. c. 14, shall not include a servant who, being *bonâ fide* employed in any capacity other than the capacities specified or referred to in provision numbered three of sect. 19 of the said Act, is occasionally or partially employed in any of the said capacities so specified or referred to, and shall not include a person who has been *bonâ fide* engaged to serve his employer for a portion only of each day, and does not reside in his employer's house.

(*j*) That is, horse-dealers and livery-stable keepers, or letters of horses for hire, or keepers of horses to be used for drawing any public stage or hackney carriage.

THE WAGES ATTACHMENT ABOLITION ACT, 1870.

33 & 34 VICT. c. 30 (k).

An Act to abolish Attachment of Wages. [14th July, 1870.]

[Whereas by an order in council made on the 18th day of November, 1867, certain of the provisions of "The Common Law Procedure Act, 1854," were extended and applied to all the courts of record established under the provisions of "The County Courts Act, 1846," and also to the City of London Courts of Record as constituted by "The County Courts Act, 1867:"]

And whereas much inconvenience has arisen by the attachment of wages to satisfy judgments recovered in some of such first-mentioned courts, and it is expedient to prevent the attachment of wages to satisfy judgments recovered in any court of record or inferior court (l):]

Be it enacted by, &c. &c.

No order of attachment of wages after passing of Act.
Short title.

1. No order for the attachment of the wages of any servant, labourer, or workman shall be made by the judge of any court of record or inferior court (m).

2. This Act may be cited as "The Wages Attachment Abolition Act, 1870."

THE TRADE UNION ACT, 1871.

34 & 35 VICT. c. 31.

An Act to amend the Law relating to Trade Unions.

[29th June, 1871.]

Be it enacted by, &c. &c., as follows:

Preliminary.

Short title.

1. This Act may be cited as "The Trade Union Act, 1871" (n).

Criminal Provisions.

Trade union not criminal.

2. The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise.

Trade union not unlawful for civil purposes.

3. The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust.

Trade union contracts.

4. Nothing in this Act shall enable (o) any court to entertain any legal proceeding instituted with the object of directly enforcing or

(k) And see c. 63 as to Scotland. In *Gordon v. Jennings*, 9 Q. B. D. 45, it was held that the secretary of a tramway company at 50*l.* a year, subject to dismissal at a quarter's notice, was not within this Act.

(l) The preamble was repealed by the Statute Law Revision Act, No. 2, 1853.

(m) *Semble*: this Act only applies to inferior courts of record, and not to the High Court: *per* Stephen, J., *Booth v. Trust*, 12 Q. B. D. 8.

(n) By sect. 1 of the Trade Union Act, 1876, *post*, the two Acts of 1871 and 1876 are to be construed as one Act.

(o) On these words see *per* Jessel, M. R., in *Rigby v. Connol*, 14 Ch. D. 483.

recovering damages for the breach of any of the following agreements, namely, when not enforceable.

- (1.) Any agreement between members of a trade union as such, concerning the conditions on which any members for the time being of such trade union shall or shall not sell their goods, transact business, employ, or be employed :
- (2.) Any agreement for the payment by any person of any subscription or penalty to a trade union :
- (3.) Any agreement for the application of the funds of a trade union (*p*),—
 - (a) To provide benefits to members ; or,
 - (b) To furnish contributions to any employer or workman not a member of such trade union, in consideration of such employer or workman acting in conformity with the rules or resolutions of such trade union ; or
 - (c) To discharge any fine imposed upon any person by sentence of a court of justice ; or
- (4.) Any agreement made between one trade union and another ; or
- (5.) Any bond to secure the performance of any of the above-mentioned agreements.

But nothing in this section shall be deemed to constitute any of the above-mentioned agreements unlawful.

5. The following Acts, that is to say,

- (1.) The Friendly Societies Acts, 1855 and 1858, and the Acts amending the same (*q*) ;
- (2.) The Industrial and Provident Societies Act, 1867, and any Act amending the same (*r*) ; and
- (3.) The Companies Acts, 1862 and 1867,

shall not apply to any trade union, and the registration of any trade union under any of the said Acts shall be void, and the deposit of the rules of any trade union made under the Friendly Societies Acts, 1855 and 1858, and the Acts amending the same, before the passing of this Act, shall cease to be of any effect (*s*).

Provisions of
18 & 19 Vict.
c. 63,
30 & 31 Vict.
c. 117.
25 & 26 Vict.
c. 89, &c., not
to apply to
trade unions.

Registered Trade Unions.

6. Any seven or more members of a trade union may by subscribing their names to the rules of the union, and otherwise complying with the provisions of this Act with respect to registry, register (*t*) such trade

Registry of
trade unions.

(*p*) Under sect. 4 an injunction has been refused where a member of a trade union sought relief against expulsion: *Rigby v. Connol*, 14 Ch. D. 482; *Chamberlain's Wharf, Limited, v. Smith*, (1900) 2 Ch. 605. But this section does not forbid the granting of an injunction to restrain an application of a society's funds to purposes inconsistent with the rules of the society: *Wolfe v. Matthews*, 21 Ch. Div. 194; nor the distribution of the assets of a society, upon its being wound up, according to such of its rules as are legal: *Strick v. Swansea Tinplate Co.*, 36 Ch. Div. 558. See also *Duke v. Littleboy*, 49 L. J., Ch. 802. In *Swaine v. Wilson*, 24 Q. B. Div. 252, it was held that if the general objects of a society are legal, apart from sect. 3, the illegality of some of its rules as being in restraint of trade will not prevent the enforcement, in favour of a member of the society, of the society's other rules which are not illegal. On this point see also *Old v. Robson*, 62 L. T. Rep. 282.

(*q*) The Friendly Societies Act, 1896 (59 & 60 Vict. c. 25).

(*r*) The Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39).

(*s*) See sect. 2 of the Trade Union Amendment Act, 1876, *post*.

(*t*) A registered trade union, whether it be thereby incorporated or not, may be sued in its registered name for a tort, but in order to enforce a judgment against it for the payment of money it may be necessary to sue the trustees: *Taff Vale Railway Co. v. Amalgamated Society of Railway Servants*, (1901) A. C. 426. See sect. 9 as to the enforcement of rights by and against trade unions in other matters.

Buildings for
trade unions
may be pur-
chased or
leased.

Property of
the trade
unions vested
in trustees.

Actions, &c.
by or against
trustees, &c.

Limitation of
responsibility
of trustees.

Treasurers, &c.
to account.

union under this Act, provided that if any one of the purposes of such union be unlawful such registration shall be void.

7. It shall be lawful for any trade union registered under this Act to purchase (*u*) or take upon lease in the names of the trustees for the time being of such union any land not exceeding one acre, and to sell, exchange, mortgage, or let the same, and no purchaser, assignee, mortgagee, or tenant shall be bound to inquire whether the trustees have authority for any sale, exchange, mortgage, or letting, and the receipt of the trustees shall be a discharge for the money arising therefrom; and for the purpose of this section every branch of a trade union shall be considered a distinct union.

8. All real and personal estate whatsoever belonging to any trade union registered under this Act shall be vested in the trustees for the time being of the trade union appointed as provided by this Act for the use and benefit of such trade union and the members thereof, and the real or personal estate of any branch of a trade union shall be vested in the trustees of such branch (*v*), and be under the control of such trustees, their respective executors or administrators, according to their respective claims and interests, and upon the death or removal of any such trustees the same shall vest in the succeeding trustees for the same estate and interest as the former trustees had therein, and subject to the same trusts, without any conveyance or assignment whatsoever, save and except in the case of stocks and securities in the public funds of Great Britain and Ireland, which shall be transferred into the names of such new trustees; and in all actions, or suits, or indictments, or summary proceedings before any court of summary jurisdiction, touching or concerning any such property, the same shall be stated to be the property of the person or persons for the time being holding the said office of trustee, in their proper names, as trustees of such trade union, without any further description.

9. The trustees of any trade union registered under this Act, or any other officer of such trade union who may be authorized so to do by the rules thereof, are hereby empowered to bring or defend, or cause to be brought or defended, any action, suit, prosecution, or complaint in any court of law or equity, touching or concerning the property (*w*), right, or claim to property of the trade union; and shall and may, in all cases concerning the real or personal property of such trade union, sue and be sued, plead and be impleaded, in any court of law or equity, in their proper names, without other description than the title of their office; and no such action, suit, prosecution, or complaint shall be discontinued or shall abate by the death or removal from office of such persons or any of them, but the same shall and may be proceeded in by their successor or successors as if such death, resignation or removal had not taken place; and such successors shall pay or receive the like costs as if the action, suit, prosecution or complaint had been commenced in their names for the benefit of or to be reimbursed from the funds of such trade union, and the summons to be issued to such trustee or other officer may be served by leaving the same at the registered office of the trade union.

10. A trustee of any trade union registered under this Act shall not be liable to make good any deficiency which may arise or happen in the funds of such trade union, but shall be liable only for the moneys which shall be actually received by him on account of such trade union.

11. Every treasurer or other officer of a trade union registered under this Act, at such times as by the rules of such trade union he should

(*u*) *Re Amos*, (1891) 3 Ch. 159; and see the Mortmain and Charitable Uses Act, 1891 (54 & 55 Vict. c. 17).

(*v*) See sect. 3 of the Trade Union Amendment Act, 1876, *post*.

(*w*) These words have a wide signification: *Linaker v. Pichey*, 84 L. T. Rep. 421.

render such account as hereinafter mentioned, or upon being required so to do, shall render to the trustees of the trade union, or to the members of such trade union, at a meeting of the trade union, a just and true account of all moneys received and paid by him since he last rendered the like account, and of the balance then remaining in his hands, and of all bonds or securities of such trade union, which account the said trustees shall cause to be audited by some fit and proper person or persons by them to be appointed; and such treasurer, if thereunto required, upon the said account being audited, shall forthwith hand over to the said trustees the balance which on such audit appears to be due from him, and shall also, if required, hand over to such trustees all securities and effects, books, papers, and property of the said trade union in his hands or custody; and if he fail to do so the trustees of the said trade union may sue such treasurer in any competent court for the balance appearing to have been due from him upon the account last rendered by him, and for all the moneys since received by him on account of the said trade union, and for the securities and effects, books, papers, and property in his hands or custody, leaving him to set off in such action the sums, if any, which he may have since paid on account of the said trade union; and in such action the said trustees shall be entitled to recover their full costs of suit, to be taxed as between attorney and client.

12. If any officer, member, or other person being or representing himself to be a member of a trade union registered under this Act, or the nominee, executor, administrator, or assignee of a member thereof, or any person whatsoever, by false representation or imposition obtain possession of any moneys, securities, books, papers, or other effects of such trade union, or having the same in his possession, wilfully withhold or fraudulently misapply the same, or wilfully apply any part of the same to purposes other than those expressed or directed in the rules of such trade union, or any part thereof, the court of summary jurisdiction for the place in which the registered office of the trade union is situate (*x*) upon a complaint made by any person on behalf of such trade union, or by the registrar, or in Scotland at the instance of the procurator fiscal of the court to which such complaint is competently made, or of the trade union, with his concurrence, may, by summary order, order such officer, member, or other person to deliver up all such moneys, securities, books, papers, or other effects to the trade union, or to repay the amount of money implied improperly, and to pay, if the court think fit, a further sum of money not exceeding twenty pounds, together with costs not exceeding twenty shillings; and, in default of such delivery of effects, or repayment of such amount of money, or payment of such penalty and costs aforesaid, the said court may order the said person so convicted to be imprisoned, with or without hard labour, for any time not exceeding three months (*y*). Provided, that nothing herein contained shall prevent the said trade union, or in Scotland her Majesty's Advocate, from proceeding by indictment against the said party: provided also, that no person shall be proceeded against by indictment if a conviction shall have been previously obtained for the same offence under the provisions of this Act.

Punishment
for with-
holding
money, &c.

Registry of Trade Union.

13. With respect to the registry, under this Act, of a trade union, and of the rules thereof, the following provisions shall have effect:

Regulations
for registry.

(1.) An application to register the trade union and printed copies of the rules, together with a list of the titles and names of the officers, shall be sent to the registrar under this Act:

(*x*) And see sect. 5 of the Trade Union Amendment Act, 1876, *post*.

(*y*) The imprisonment extinguishes the debt: *Knight v. Whitmore*, 53 L. T., N. S. 233; see *Vernon v. Watson*, (1891) 2 Q. B. 288.

- (2.) The registrar, upon being satisfied that the trade union has complied with the regulations respecting registry in force under this Act, shall register such trade union and such rules :
- (3.) No trade union shall be registered under a name identical with that by which any other existing trade union has been registered, or so nearly resembling such name as to be likely to deceive the members or the public (2) :
- (4.) Where a trade union applying to be registered has been in operation for more than a year before the date of such application, there shall be delivered to the registrar before the registry thereof a general statement of the receipts, funds, effects, and expenditure of such trade union in the same form, and showing the same particulars, as if it were the annual general statement required as hereinafter mentioned to be transmitted annually to the registrar :
- (5.) The registrar upon registering such trade union shall issue a certificate of registry, which certificate, unless proved to have been withdrawn or cancelled, shall be conclusive evidence that the regulations of this Act with respect to registry have been complied with :
- (6.) One of her Majesty's Principal Secretaries of State may from time to time make regulations respecting registry under this Act, and respecting the seal (if any) to be used for the purpose of such registry, and the forms to be used for such registry, and the inspection of documents kept by the registrar under this Act, and respecting the fees, if any, to be paid on registry, not exceeding the fees specified in the second schedule to this Act, and generally for carrying this Act into effect.

Rules of
registered
trade unions

14. With respect to the rules of a trade union registered under this Act, the following provisions shall have effect :

- (1.) The rules of every such trade union shall contain provisions in respect of the several matters mentioned in the first schedule to this Act :
- (2.) A copy of the rules shall be delivered by the trade union to every person on demand on payment of a sum not exceeding one shilling.

Registered
office of
trade unions.

15. Every trade union registered under this Act shall have a registered office to which all communications and notices may be addressed : if any trade union under this Act is in operation for seven days without having such an office, such trade union and every officer thereof shall each incur a penalty not exceeding five pounds for every day during which it is so in operation.

Notice of the situation of such registered office, and of any change therein, shall be given to the registrar and recorded by him ; until such notice is given the trade union shall not be deemed to have complied with the provisions of this Act.

Annual
returns to be
prepared as
registrar may
direct.

16. A general statement of the receipts, funds, effects, and expenditure of every trade union registered under this Act shall be transmitted to the registrar before the first day of June in every year, and shall show fully the assets and liabilities at the date, and the receipts and expenditure during the year preceding the date to which it is made out, of the trade union ; and shall show separately the expenditure in respect of the several objects of the trade union, and shall be prepared and made out up to such date, in such form, and shall comprise such particulars, as the registrar may from time to time require ; and every member of, and depositor in, any such trade union shall be entitled to receive, on application to the treasurer or secretary of that trade union, a copy of such general statement, without making any payment for the same.

(2) *R. v. Registrar of Friendly Societies*, L. R., 7 Q. B. 741.

Together with such general statement there shall be sent to the registrar a copy of all alterations of rules and new rules and changes of officers made by the trade union during the year preceeding the date up to which the general statement is made out, and a copy of the rules of the trade union as they exist at that date.

Every trade union which fails to comply with or acts in contravention of this section, and also every officer of the trade union so failing, shall each be liable to a penalty not exceeding five pounds for each offence.

Every person who wilfully makes or orders to be made any false entry in or any omission from any such general statement, or in or from the return of such copies of rules or alterations of rules shall be liable to a penalty not exceeding fifty pounds for each offence.

17. The registrars of the friendly societies in England, Scotland, and Ireland shall be the registrars under this Act. Registrars.

The registrar shall lay before Parliament annual reports with respect to the matters transacted by such registrars in pursuance of this Act.

18. If any person with intent to mislead or defraud gives to any member of a trade union registered under this Act, or to any person intending or applying to become a member of such trade union, a copy of any rules or of any alterations or amendments of the same other than those which respectively exist for the time being, on the pretence that the same are the existing rules of such trade union, or that there are no other rules of such trade union, or if any person, with the intent aforesaid gives a copy of any rules to any person on the pretence that such rules are the rules of a trade union registered under this Act which is not so registered, every person so offending shall be deemed guilty of a misdemeanor. Circulating false copies of rules, &c. a misdemeanor.

Legal Proceedings.

19. In England and Ireland all offences and penalties under this Act may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts. Summary proceedings for offences, penalties, &c.

In England and Ireland summary orders under this Act may be made and enforced on complaint before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

Provided as follows :—

1. The "Court of Summary Jurisdiction," when hearing and determining an information or complaint, shall be constituted in some one of the following manners ; that is to say,

(A) In England,

- (1.) In any place within the jurisdiction of a metropolitan police magistrate or other stipendiary magistrate, of such magistrate or his substitute :
- (2.) In the city of London, of the Lord Mayor or any alderman of the said city :
- (3.) In any other place, of two or more justices of the peace sitting in petty sessions.

(B) In Ireland.

- (1.) In the police district of Dublin metropolis, of a divisional justice :
- (2.) In any other place of a resident magistrate.

In Scotland all offences and penalties under this Act shall be prosecuted and recovered by the procurator fiscal of the county in the sheriff court under the provisions of the Summary Procedure Act. 1864.

In Scotland summary orders under this Act may be made and enforced on complaint in the sheriff court.

All the jurisdictions, powers, and authorities necessary for giving effect to these provisions relating to Scotland are hereby conferred on the sheriffs and their substitutes.

Provided that in England, Scotland, and Ireland—

2. The description of any offence under this Act in the words of such Act shall be sufficient in law.

3. Any exception, exemption, proviso, excuse, or qualification, whether it does or not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant or prosecutor.

Appeal to
quarter
sessions.

20. In England or Ireland, if any party feels aggrieved by any order or conviction made by a court of summary jurisdiction on determining any complaint or information under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following :

(1.) The appeal shall be made to some court of general or quarter sessions. [*The rest of this section was repealed by 47 & 48 Vict. c. 43.*]

Appeal in
Scotland as
prescribed by
20 Geo. 2,
c. 43.

21. In Scotland it shall be competent to any person to appeal against any order or conviction under this Act to the next Circuit Court of Justiciary, or where there are no circuit courts to the High Court of Justiciary at Edinburgh in the manner prescribed by and under the rules, limitations, conditions, and restrictions contained in the Act passed in the twentieth year of the reign of his Majesty King George the Second, chapter forty-three, in regard to appeals to circuit courts in matters criminal, as the same may be altered or amended by any Acts of Parliament for the time being in force.

All penalties imposed under the provisions of this Act in Scotland may be enforced in default of payment by imprisonment for a term to be specified in the summons or complaint, but not exceeding three calendar months.

All penalties imposed and recovered under the provisions of this Act in Scotland shall be paid to the sheriff clerk, and shall be accounted for and paid by him to the Queen's and Lord Treasurer's Remembrancer on behalf of the Crown.

Interested
person not to
act as a
member of a
court of
appeal.

22. A person who is a master, or father, son, or brother of a master, in the particular manufacture, trade, or business in or in connexion with which any offence under this Act is charged to have been committed shall not act as or as a member of a court of summary jurisdiction or appeal for the purposes of this Act.

Definitions.

Definitions.

23. In this Act—

The term Summary Jurisdiction Acts means as follows (a) :

In Scotland the term "misdemeanor" means a crime and offence.

"Trade
union."

[*The term "trade union" means such combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, as would, if this Act had not passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade (b) :* Provided that this Act shall not affect—

1. Any agreement between partners as to their own business ;

2. Any agreement between an employer and those employed by him as to such employment ;

(a) The definition was repealed by the Statute Law Revision (No. 2) Act 1893. See now sect. 13 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63).

(b) This definition of trade union was repealed and a new one substituted by sect. 16 of the Trade Union Act, 1876, *post*.

3. Any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade, or handicraft.

[*Sect. 24 was repealed by the Statute Law Revision Act, 1883.*]

SCHEDULES.

FIRST SCHEDULE.

Of matters to be provided for by the Rules of Trade Unions Registered under this Act.

1. The name of the trade union and place of meeting for the business of the trade union. See 18 & 19
Vict. c. 63.
s. 25.
2. The whole of the objects for which the trade union is to be established, the purposes for which the funds thereof shall be applicable, and the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member of such trade union.
3. The manner of making, altering, amending, and rescinding rules.
4. A provision for the appointment and removal of a general committee of management, of a trustee or trustees, treasurer, and other officers.
5. A provision for the investment of the funds, and for an annual or periodical audit of accounts.
6. The inspection of the books and names of members of the trade union by every person having an interest in the funds of the trade union.

SECOND SCHEDULE.

Maximum Fees.

	£	s.	d.
For registering trade union	1	0	0
For registering alterations in rules	0	10	0
For inspection of documents	0	2	6

THE STEAM WHISTLES ACT, 1872.

35 & 36 VICT. c. 61.

*An Act to regulate the use of Steam Whistles in certain
Manufactories.* [6th August, 1872.]

Be it enacted by, &c., &c. as follows :

1. This Act shall not apply to Scotland.
2. No person shall use or employ in any manufactory, or any other place, any steam (c) whistle or steam trumpet for the purpose of summoning or dismissing workmen or persons employed without the sanction of the sanitary authority, and every person offending against this section shall be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding forty shillings for every day during which such offence continues : Provided always, that the sanitary authority, in case they have sanctioned the use of any such instrument as aforesaid, may at any time revoke such sanction on giving one month's notice to the person

Not to apply
to Scotland.

Use of steam
whistles and
trumpets.

(c) This includes a whistle worked by a gas engine : *Herbert v. Leigh Mills Co.*, 5 Times L. Rep. 449.

using the same : Provided also, that it shall be lawful for the Local Government Board, on representation made to them by any person that he is prejudicially affected by such sanction, to revoke the same, and such revocation shall have the same force and effect as if it had been made by the sanitary authority.

Definition. 3. "Sanitary authority" means the authority at the time being empowered to execute the Nuisance Removal Acts, as defined and extended by the Sanitary Act, 1866 (*d*).

Legal procedure. 4. All offences and penalties under this Act may be prosecuted and recovered in England in manner directed by the Act of the session of the eleventh and twelfth years of the reign of her present Majesty, chapter forty-three, and any Acts amending the same (*e*), and in Ireland, in the police district of Dublin metropolis, in manner directed by the Acts regulating the powers and duties of justices of the peace for such district, or of the police of that district, and elsewhere in manner directed by the Petty Sessions (Ireland) Act, 1851, and any Act amending the same.

THE METALLIFEROUS MINES REGULATION ACT, 1872.

35 & 36 VICT. c. 77.

An Act to consolidate and amend the Law relating to Metalliferous Mines.
[10th August, 1872.]

Whereas it is expedient to amend the law relating to the regulation and inspection of mines other than mines to which the Coal Mines Regulation Act, 1872, applies :

Be it therefore enacted by, &c., &c., as follows :

Preliminary.

Short title. 1. This Act may be cited as "The Metalliferous Mines Regulation Act, 1872."

Application of Act. [*Sec. 2 was repealed by the Statute Law Revision Act, 1893.*]
2. This Act shall apply to every mine of whatever description other than a mine to which the Coal Mines Regulation Act, 1872 (*f*), applies.

PART I.

Employment of Women, Young Persons, and Children.

Employment of women and children in mines. 3. No boy under the age of [*twelve (g)*] years, and no girl or woman of any age, shall be employed in or allowed to be for the purpose of employment in any mine to which this Act applies below ground.

Hours of employment of male young persons in mines. 4. A boy of the age of twelve years and under the age of thirteen years, and a male young person of the age of thirteen and under the age of sixteen years shall not be employed in or allowed to be for the purpose of employment in any mine to which this Act applies below ground for more than fifty-four hours in any one week, or more than ten hours in any

(*d*) See now the Public Health Act, 1875 (38 & 39 Vict. c. 55).

(*e*) See the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49).

(*f*) See now sect. 83 of the Coal Mines Regulation Act, 1887, *post*.

(*g*) Now thirteen ; see the Mines (Prohibition of Child Labour Underground) Act, 1900, *post*.

one day, or otherwise than in accordance with the regulations following ; that is to say,

- (1.) There shall be allowed an interval of not less than eight hours between the period of employment on Friday and the period of employment on the following Saturday, and in other cases of not less than twelve hours between each period of employment ; provided always, that in the case of boys and young male persons whose employment is at such distance from their ordinary place of residence that they do not return there during the intervals of labour, and who are not employed during more than forty hours in any week, an interval of not less than eight hours shall be allowed between each period of employment :
- (2.) The period of each employment shall be deemed to begin at the time of leaving the surface, and to end at the time of returning to the surface :
- (3.) A week shall be deemed to begin at midnight on Saturday night, and to end at midnight on the succeeding Saturday night.

6. The owner or agent of every mine to which this Act applies shall keep in the office at the mine, or in the principal office of the mine belonging to the same owner in the district in which the mine is situated, a register, and shall cause to be entered in such register the name, age, residence, and date of first employment of all boys of the age of twelve and under the age of thirteen years, and of all male young persons of the age of thirteen and under the age of sixteen years who are employed in the mine below ground, and of all women, young persons, and children employed above ground in connexion with a mine, and shall produce such register to any inspector under this Act at the mine at all reasonable times when required by him, and allow him to inspect and copy the same.

The immediate employer of every boy or male young person of the ages aforesaid, other than the owner or agent of the mine, before he causes such boy or male young person to be in any mine to which this Act applies below ground, shall report to the owner or agent of such mine, or some person appointed by such owner or agent, that he is about to employ him in such mine.

7. Where there is a shaft, inclined plane, or level in any mine to which this Act applies, whether for the purpose of an entrance to such mine or of a communication from one part to another part of such mine, and persons are taken up, down, or along such shaft, plane, or level by means of any engine, windlass, or gin, driven or worked by steam or any mechanical power, or by an animal or by manual labour, a person shall not be allowed to have charge of such engine, windlass, or gin, or of any part of the machinery, ropes, chains, or tackle connected therewith, unless he is a male of at least eighteen years of age.

Where the engine, windlass, or gin is worked by an animal the person under whose direction the driver of the animal acts shall, for the purposes of this section, be deemed to be the person in charge of the engine, windlass, or gin, but such driver shall not be under twelve years of age.

8. If any person contravenes or fails to comply with any provision of this Act with respect to the employment of women, girls, young persons, or boys, or to the register of or report respecting boys and male young persons, or to the employment of persons about any engine, windlass, or gin, he shall be guilty of an offence against this Act : and in case of any such contravention or non-compliance by any person whomsoever in the case of any mine, the owner and agent of such mine shall each be guilty of an offence against this Act, unless he proves that he had taken all reasonable means by publishing and to the best of his power enforcing the provisions of this Act to prevent such contravention or non-compliance (*h*).

Register to be kept by owner, &c. of boys and male young persons employed in mines.

As to employment of young persons under eighteen in connection with engines.

Penalty for employment of persons contrary to this Act.

(*h*) Compare sect. 50 of the Coal Mines Regulation Act, 1887, *post*.

If it appear that a boy or young person or a person employed about an engine, windlass, or gin, was employed on the representation of his parent or guardian that he was of that age at which his employment would not be in contravention of this Act, and under the belief in good faith that he was of that age, the owner or agent of the mine and the immediate employer shall be exempted from any penalty, and the parent or guardian shall, for such misrepresentation, be deemed guilty of an offence against this Act.

Wages.

Prohibition of
payment of
wages at
public houses,
&c.

9. No wages shall be paid to any person employed in or about any mine to which this Act applies at or within any public house, beer shop, or place for the sale of any spirits, wine, beer, cyder, or other spirituous or fermented liquor, or other house of entertainment, or any office, garden, or place belonging or contiguous thereto, or occupied therewith (*i*).

Every person who contravenes or fails to comply with, or permits any person to contravene or fail to comply with, this section shall be guilty of an offence against this Act, and in the event of any such contravention or non-compliance in the case of any mine by any person whomsoever the owner and agent of such mine shall each be guilty of an offence against this Act, unless he prove that he had taken all reasonable means by publishing and to the best of his power enforcing the provisions of this section to prevent such contravention or non-compliance.

Returns, Notices, and Abandonment.

[*Sect. 10 was repealed and new provisions substituted by the Metalliferous Mines Regulation Act, 1875, post.*]

Notice of
accidents in
mines to be
sent to
inspector.

11. Where in or about any mine to which this Act applies, whether above or below ground, either—

- (1.) loss of life or any personal injury to any person employed in or about the mine occurs by reason of any explosion of gas, powder, or of any steam boiler; or
- (2.) loss of life or any serious personal injury to any person employed in or about the mine occurs by reason of any accident whatever, the owner or agent of the mine shall, within twenty-four hours next after the explosion or accident, send notice in writing of the explosion or accident and of the loss of life or personal injury occasioned thereby to the inspector of the district on behalf of a Secretary of State, and shall specify in such notice the character of the explosion or accident, and the number of persons killed and injured respectively.

Where any personal injury, of which notice is required to be sent under this section, results in the death of the person injured, notice in writing of the death shall be sent to the inspector of the district on behalf of a Secretary of State within twenty-four hours after such death comes to the knowledge of the owner or agent.

Every owner or agent who fails to act in compliance with this section shall be guilty of an offence against this Act.

Notice of
opening and
abandonment
of mine to
be given to
inspector.

12. In any of the following cases, namely,

- (1.) Where any working is commenced for the purpose of opening a new shaft for any mine to which this Act applies;
- (2.) Where a shaft of any mine to which this Act applies is abandoned or the working thereof discontinued;
- (3.) Where the working of a shaft of any mine to which this Act applies is recommenced after any abandonment or discontinuance for a period exceeding two months; or,

(*i*) Compare sect. 11 of the Coal Mines Regulation Act, 1887, *post*; and the Payment of Wages in Public Houses Prohibition Act, 1883, *post*.

- (4.) Where any change occurs in the name of, or in the name of the owner or agent of, a mine to which this Act applies, or in the officers of any incorporated company which is the owner of a mine to which this Act applies;

the owner or agent of such mine shall give notice thereof to the inspector of the district within two months after such commencement, abandonment, discontinuance, recommencement, or change, and if such notice is not given, the owner or agent shall be guilty of an offence against this Act.

Provided that—

- (1.) This section shall apply only to any working or mine in which more than twelve persons are ordinarily employed below ground; and
- (2.) In the case of a partnership working a mine within the stannaries of Devon and Cornwall, if notice of every change in the purser of the partnership is sent as required by this section, notice of a change in the members of such partnership need not be sent in pursuance of this section.

13. Where any mine to which this Act applies is abandoned or the working thereof discontinued, at whatever time such abandonment or discontinuance occurred, the owner thereof, and every other person interested (*j*) in the minerals of the mine, shall cause the top of the shaft and any side entrance from the surface to be and to be kept securely fenced (*k*) for the prevention of accidents.

Fencing of
abandoned
mine.

Provided that—

- (1.) Subject to any contract to the contrary, the owner of the mine shall, as between him and any other person interested in the minerals of the mine, be liable to carry into effect this section, and to pay any costs incurred by any other person interested in the minerals of the mine in carrying this section into effect;
- (2.) Where such abandonment or discontinuance has occurred in the case of a mine before the passing of this Act, this section shall apply only to such shaft or side entrance of the mine as is situate within fifty yards of any highway, road, footpath, or place of public resort or in open or unenclosed land, or not being situate as aforesaid, is required by an inspector in writing to be fenced, on the ground that it is specially dangerous;
- (3.) Nothing in this section shall exempt any person from any liability under any other Act, or otherwise.

If any person fail to act in conformity with this section he shall be guilty of an offence against this Act.

Any shaft or side entrance which is not fenced as required by this section, and is within fifty yards of any highway, road, footpath, or place of public resort, or is in open or unenclosed land, or is required by an inspector as aforesaid to be fenced, shall be deemed to be a nuisance within the meaning of section eight of the Nuisances Removal Act for England, 1855, as amended and extended by the Sanitary Act, 1866 (*l*).

14. Where any mine to which this Act applies in which more than twelve persons have ordinarily been employed below ground is abandoned, the owner of such mine at the time of the abandonment shall, within three months after such abandonment, send to a Secretary of State an accurate plan, on a scale of not less than a scale of two chains to one inch, or on such other scale as the plan last used in the mine is

Plans of
abandoned
mines to be
sent to Secre-
tary of State.

(*j*) See *Evans v. Lady Mostyn*, 2 C. P. D. 547; *Arkwright v. Evans*, 49 L. J., M. C. 82; *Stokes v. Arkwright*, 77 L. T. Rep. 400.

(*k*) *Foster v. Owen*, 62 L. J., M. C. 7.

(*l*) Repealed; see now Public Health Act, 1875, ss. 91 and 313.

constructed on, showing the boundaries of the workings of such mine up to the time of the abandonment, with the view of its being preserved under the care of the Secretary of State; but no person other than an inspector shall be at liberty to inspect or to copy such plan within ten years of its receipt by the Secretary of State without the license of such Secretary of State.

Every person who fails to comply with this section shall be guilty of an offence against this Act.

Inspection.

Appointment of inspectors of mines.

15. A Secretary of State may from time to time appoint any fit persons to be inspectors of mines to which this Act applies, and assign them their duties, and may award them such salaries as the Commissioners of her Majesty's Treasury may approve, and may remove such inspectors.

Notice of the appointment of every such inspector shall be published in the London Gazette.

Any such inspector is referred to in this Act as an inspector, and the inspector of a district means the inspector who is for the time being assigned to the district or portion of the United Kingdom with reference to which the term is used.

Any person appointed or acting as inspector under the Coal Mines Regulation Act, 1872 (*m*), if directed by a Secretary of State to act as an inspector under this Act, may so act and shall be deemed to be an inspector under this Act.

Disqualification of persons as inspectors.

16. Any person who practises or acts or is a partner of any person who practises or acts as a land agent or mining engineer, or as a manager, viewer, agent, or valuer of mines, or arbitrator in any differences arising between owners, agents, or managers of mines, or is otherwise employed in or about any mine (whether such mine is one to which this Act applies or not), shall not act as an inspector of mines under this Act.

Powers of inspectors.

17. An inspector under this Act shall have power to do all or any of the following things; namely,

- (1.) To make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act relating to matters above ground or below ground are complied with in the case of any mine to which this Act applies;
- (2.) To enter, inspect and examine any mine to which this Act applies, and every part thereof, at all reasonable times, by day and night, but so as not to impede or obstruct the working of the said mine;
- (3.) To examine into and make inquiry respecting the state and condition of any mine to which this Act applies, or any part thereof, and the ventilation of the mine, and the sufficiency of the special rules (if any) for the time being in force in the mine, and all matters and things connected with or relating to the safety of the persons employed in or about the mine or any mine contiguous thereto;
- (4.) To exercise such other powers as may be necessary for carrying this Act into effect.

Every person who wilfully obstructs any inspector in the execution of his duty under this Act, and every owner and agent of a mine who refuses or neglects to furnish to the inspector the means necessary for making any entry, inspection, examination, or inquiry under this Act in relation to such mine, shall be guilty of an offence against this Act.

Notice to be given by inspectors of causes of danger not

18. If in any respect (which is not provided against by any express provision of this Act, or by any special rule) any inspector find any mine to which this Act applies, or any part thereof, or any matter, thing, or practice in or connected with any such mine, to be dangerous or defective, so as in his opinion to threaten or tend to the bodily injury of any person,

(*m*) See sect. 83 of the Coal Mines Regulation Act, 1837, *post*.

such inspector may give notice in writing thereof to the owner or agent of the mine, and shall state in such notice the particulars in which he considers such mine, or any part thereof, or any matter, thing, or practice, to be dangerous or defective, and require the same to be remedied; and unless the same be forthwith remedied, the inspector shall also report the same to a Secretary of State.

provided for
by the rules.

If the owner or agent of the mine objects to remedy the matter complained of in the notice, he may, within twenty days after the receipt of such notice, send his objection in writing, stating the grounds thereof, to a Secretary of State; and thereupon the matter shall be determined by arbitration in manner provided by this Act; and the date of the receipt of such objection shall be deemed to be the date of the reference.

If the owner or agent fail to comply either with the requisition of the notice, where no objection is sent within the time aforesaid, or with the award made on arbitration, within twenty days after the expiration of the time for objection or the time of making of the award (as the case may be), he shall be guilty of an offence against this Act, and the notice and award shall respectively be deemed to be written notice of such offence.

Provided that the court, if satisfied that the owner or agent has taken active measures for complying with the notice or award, but has not, with reasonable diligence, been able to complete the works, may adjourn any proceedings taken before them for punishing such offence; and, if the works are completed within a reasonable time, no penalty shall be inflicted.

No person shall be precluded by any agreement from doing such acts as may be necessary to comply with the provisions of this section, or be liable under any contract to any penalty or forfeiture for doing such acts.

19. The owner or agent of every mine to which this Act applies shall keep in the office at the mine, or in the principal office of the mines belonging to the same owner in the district in which the mine is situated, an accurate plan of the workings of such mine, showing the workings up to at least six months previously, other than workings which were last discontinued at a date more than twelve months before the commencement of this Act.

Plans of mines
to be kept.

The owner or agent of the mine shall produce to an inspector under this Act, at one of the aforesaid offices, such plan, and shall, if requested by the inspector, mark on such plan the progress of the workings of the mine up to the time of such production, and shall allow the inspector to examine the same.

If the owner or agent of any mine fails to keep such plan as is prescribed by this section, or wilfully refuses to produce or allow to be examined such plan, or wilfully withholds any portion of any plan, or conceals any part of the workings of his mine, or produces an imperfect or inaccurate plan, unless he shows that he was ignorant of such concealment, imperfection, or inaccuracy, he shall be guilty of an offence against this Act; and further, the inspector may, by notice in writing (whether a penalty for such offence has or has not been inflicted), require the owner or agent to cause an accurate plan, such as is prescribed by this section, to be made within a reasonable time at the expense of the owner of the mine, on a scale of not less than a scale of two chains to one inch, or on such other scale as the plan used in the mine is constructed on.

If the owner or agent fail within twenty days, or such further time as may be shown to be necessary, after the requisition of the inspector, to make or cause to be made such plan, he shall be guilty of an offence against this Act.

Provided that this section shall apply only to a mine to which this Act applies, and in which more than twelve persons are ordinarily employed below ground.

20. Every inspector under this Act shall make an annual report of his proceedings during the preceding year to a Secretary of State, which report shall be laid before both Houses of Parliament.

Inspector to
make an
annual report

and special report when directed.

A Secretary of State may at any time direct an inspector to make a special report with respect to any accident in a mine to which this Act applies, which accident has caused loss of life or personal injury to any person, and in such case shall cause such report to be made public at such time and in such manner as he thinks expedient.

Arbitration.

Provisions as to arbitrations.

21. With respect to arbitrations under this Act, the following provisions shall have effect :

- (1.) The parties to the arbitration are in this action deemed to be the owner or agent of the mine on the one hand, and an inspector of mines on behalf of the Secretary of State on the other :
- (2.) Each of the parties to the arbitration may, within twenty-one days after the date of the reference, appoint an arbitrator :
- (3.) No person shall act as arbitrator or umpire under this Act who is employed in or in the management of or is interested in the mine to which the arbitration relates :
- (4.) The appointment of an arbitrator under this section shall be in writing, and notice of the appointment shall be forthwith sent to the other party to the arbitration, and shall not be revoked without the consent of such other party :
- (5.) The death, removal, or other change in any of the parties to the arbitration shall not affect the proceedings under this section :
- (6.) If within the said twenty-one days either of the parties fail to appoint an arbitrator, the arbitrator appointed by the other party may proceed to hear and determine the matter in difference, and in such case the award of the single arbitrator shall be final :
- (7.) If before an award has been made any arbitrator appointed by either party die or become incapable to act, or for fourteen days refuse or neglect to act, the party by whom such arbitrator was appointed may appoint some other person to act in his place ; and if he fail to do so within fourteen days after notice in writing from the other party for that purpose, the remaining arbitrator may proceed to hear and determine the matters in difference, and in such case the award of such single arbitrator shall be final.
- (8.) In either of the foregoing cases, where an arbitrator is empowered to act singly, upon one of the parties failing to appoint, the party so failing may, before the single arbitrator has actually proceeded in the arbitration, appoint an arbitrator, who shall then act as if no failure had been made.
- (9.) If the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed or within such extended time (if any) as may have been appointed for that purpose by both arbitrators under their hands, the matter in difference shall be determined by the umpire appointed as hereinafter mentioned :
- (10.) The arbitrators, before they enter upon the matters referred to them, shall appoint by writing under their hands an umpire to decide on points on which they may differ :
- (11.) If the umpire die or become incapable to act before he has made his award, or refuses to make his award within a reasonable time after the matter has been brought within his cognizance, the persons or person who appointed such umpire shall forthwith appoint another umpire in his place :
- (12.) If the arbitrators fail or refuse, or for seven days after the request of either party to neglect to appoint an umpire, then on the application of either party an umpire shall be appointed by the

chairman of the general or quarter sessions of the peace within the jurisdiction of which the mine is situate :

- (13.) The decision of every umpire on the matters referred to him shall be final :
- (14.) If a single arbitrator fail to make his award within twenty-one days after the day on which he was appointed, the party who appointed him may appoint another arbitrator to act in his place :
- (15.) The arbitrators and their umpire, or any of them, may examine the parties and their witnesses on oath : they may also consult any counsel, engineer, or scientific person whom they may think it expedient to consult :
- (16.) The payment, if any, to be made to any arbitrator or umpire for his services, shall be fixed by the Secretary of State, and together with the costs of the arbitration and award, shall be paid by the parties or one of them according as the award may direct. Such costs may be taxed by a master of one of the superior courts, who, on the written application of either of the parties shall ascertain and certify the proper amount of such costs. The amount, if any, payable by the Secretary of State, shall be paid as part of the expenses of inspectors under this Act. The amount, if any, payable by the owner or agent may, in the event of non-payment, be recovered in the same manner as penalties under this Act :
- (17.) Every person who is appointed an arbitrator or umpire under this section shall be a practical mining engineer or a person accustomed to the working of mines ; but when an award has been made under this section, the arbitrator or umpire who made the same shall be deemed to have been duly qualified as provided by this section.

Coroners.

22. With respect to coroners' inquests on the bodies of persons whose death may have been caused by explosions or accidents in mines to which this Act applies, the following provisions shall have effect :

Provisions as to coroners' inquests on deaths from accidents in mines.

- (1.) Where a coroner holds an inquest upon a body of any person whose death may have been caused by any explosion or accident, of which notice is required by this Act to be given to the inspector of the district, the coroner shall adjourn such inquest unless an inspector, or some person on behalf of a Secretary of State, is present to watch the proceedings :
- (2.) The coroner, at least four days before holding the adjourned inquest, shall send to the inspector of the district notice in writing of the time and place of holding the adjourned inquest :
- (3.) The coroner, before the adjournment, may take evidence to identify the body, and may order the interment thereof :
- (4.) If an explosion or accident has not occasioned the death of more than one person, and the coroner has sent to the inspector of the district notice of the time and place of holding the inquest not less than forty-eight hours before the time of holding the same, it shall not be imperative on him to adjourn such inquest in pursuance of this section, if the majority of the jury think it unnecessary so to adjourn ;
- (5.) An inspector shall be at liberty at any such inquest to examine any witness, subject nevertheless to the order of the coroner :
- (6.) Where evidence is given at an inquest at which an inspector is not present of any neglect as having caused or contributed to the explosion or accident, or of any defect in or about the mine appearing to the coroner or jury to require a remedy, the coroner shall send to the inspector of the district notice in writing of such neglect or default :

- (7.) Any person having a personal interest in or employed in or in the management of the mine in which the explosion or accident occurred, shall not be qualified to serve on the jury empanelled on the inquest; and it shall be the duty of the constable or other officer not to summon any person disqualified under this provision, and it shall be the duty of the coroner not to allow any such person to be sworn or to sit on the jury.

Every person who fails to comply with the provisions of this section shall be guilty of an offence against this Act.

PART II.—RULES.

General Rules.

- General rules: 23. The following general rules shall, so far as may be reasonably practicable (*n*), be observed in every mine to which this Act applies:
- Ventilation. (1.) An adequate amount of ventilation shall be constantly produced (*n*) in every mine to such an extent that the shafts, winzes, sumps, levels, underground stables, and working places of such mine, and the travelling roads to and from such working places, shall be in a fit state for working and passing therein.
- Gunpowder and blasting. 2.) Gunpowder or other explosive or inflammable substance shall only be used underground in the mine as follows (*a*):
- (a) It shall not be stored in the mine:
 - (b) It shall not be taken into the mine, except in a case (*p*) or canister containing not more than four pounds:
 - (c) A workman shall not have in use at one time in any one place more than one of such cases or canisters:
 - (d) In charging holes for blasting, except in mines excepted from the operation of this section by the Secretary of State, an iron or steel pricker shall not be used, and a person shall not have in his possession in the mine underground any iron or steel pricker, and an iron or steel tamping rod or stemmer shall not be used for ramming either the wadding or the first part of the tamping or stemming on the powder:
 - (e) A charge of powder which has missed fire shall not be unrammed.
- Man-holes in self-acting or engine planes. (3.) Every underground plane on which persons travel, which is self-acting, or worked by an engine, windlass, or gin, shall be provided (if exceeding thirty yards in length) with some proper means of signalling between the stopping places and the ends of the plane, and shall be provided in every case, at intervals of not more than twenty yards, with sufficient man-holes for places of refuge.
- Spaces in horse roads. (4.) Every road on which persons travel underground, where the produce of the mine in transit exceeds ten tons in any one hour over any part thereof, and where the load is drawn by a horse or other animal, shall be provided, at intervals of not more than one hundred yards, with sufficient spaces for places of refuge, each of which spaces shall be of sufficient length, and of at least three feet in width between the waggons running on the tram-road and the side of the road; and the Secretary of State may, if he see fit, require the inspector to certify whether the

(*n*) See sect. 49 of the Coal Mines Regulation Act, 1887, *post*, p. 618.

(*a*) For slate mines an exemption from this rule may be obtained; see the Slate Mines (Gunpowder) Act, 1882, *post*, p. 595.

(*p*) This does not include a linen or calico bag: *Foster v. Diphwys Slate Co.*, 18 Q. B. D. 428.

- produce of the mine in transit on the road aforesaid does or does not ordinarily exceed the weight as aforesaid.
- (5.) Every man-hole and space for a place of refuge shall be constantly kept clear, and no person shall place anything in a man-hole or such space so as to prevent access thereto. Keeping spaces clear.
- (6.) The top of every shaft which was opened before the commencement of the actual working for the time being of the mine, and has not been used during such actual working shall, if so required in writing by the inspector of the district, be securely fenced, and the top of every other shaft which for the time being is out of use, or used only as an air shaft, shall be securely fenced. Fencing of old shafts.
- (7.) The top and all entrances between the top and bottom of every working or pumping shaft shall be properly fenced, but this shall not be taken to forbid the temporary removal of the fence for the purpose of repairs or other operations if proper precautions are used. Fencing of entrances to shafts.
- (8.) Where the natural strata are not safe, every working or pumping shaft shall be securely cased, lined or otherwise made secure. Securing of shafts.
- (9.) Where one portion of a shaft is used for the ascent and descent of persons by ladders or a man-engine, and another portion of the same shaft is used for raising the material gotten in the mine, the first-mentioned portion shall be cased or otherwise securely fenced off from the last-mentioned portion. Division of shaft.
- (10.) Every working shaft (*g*) in which persons are raised shall, if exceeding fifty yards in depth, and not exempted in writing by the inspector of the district, be provided with guides and some proper means of communicating distinct and definite signals from the bottom of the shaft and from every entrance for the time being in work between the surface and the bottom of the shaft to the surface, and from the surface to the bottom of the shaft and to every entrance for the time being in work between the surface and the bottom of the shaft. Signalling.
- (11.) A sufficient cover overhead shall be used when lowering or raising persons in every working shaft, except where it is worked by a windlass, or where the person is employed about the pump or some work of repair in the shaft, or where a written exemption is given by the inspector of the district. Cover overhead.
- (12.) A single linked chain shall not be used for lowering or raising persons in any working shaft or plane except for the short coupling chain attached to the cage or load. Chains.
- (13.) There shall be on the drum of every machine used for lowering or raising persons such flanges or horns, and also if the drum is conical, such other appliances, as may be sufficient to prevent the rope from slipping. Slipping of rope on drum.
- (14.) There shall be attached to every machine worked by steam, water or mechanical power, and used for lowering or raising persons, an adequate break, and also a proper indicator (in addition to any mark on the rope) which shows to the person who works the machine the position of the cage or load in the shaft. Break.
- (15.) A ladder permanently used for the ascent or descent of persons in the mine shall not be fixed in a vertical or overhanging position, and shall be inclined at the most convenient angle which the space in which the ladder is fixed allows, and every such ladder shall have substantial platforms at intervals of not more than twenty yards. Inclination of ladders.
- (16.) If more than twelve persons are ordinarily employed in the mine Dressing room.

(*g*) *Foster v. North Hendre Mining Co.*, (1891) 1 Q. B. 71.

- below ground, sufficient accommodation shall be provided above ground near the principal entrance of the mine, and not in the engine-house or boiler-house, for enabling the persons employed in the mine to conveniently dry and change their dresses.
- Fencing machinery. (17.) Every fly-wheel and all exposed and dangerous parts of the machinery used in or about the mine shall be and be kept securely fenced.
- Gauges to boilers and safety valve. (18.) Every steam boiler shall be provided with a proper steam gauge and water gauge, to show respectively the pressure of steam and the height of water in the boiler, and with a proper safety valve.
- Wilful damage. (19.) No person shall wilfully damage, or without proper authority remove or render useless, any fencing, casing, lining, guide, means of signalling, signal, cover, chain, flange, horn, break, indicator, ladder, platform, steam gauge, water gauge, safety valve, or other appliance or thing provided in any mine in compliance with this Act.

Every person who contravenes or does not comply with any of the general rules in this section shall be guilty of an offence against this Act, and in the event of any contravention of or non-compliance with any of the said general rules in the case of any mine to which this Act applies, by any person whomsoever, being proved, the owner and agent of such mine shall each be guilty of an offence against this Act, unless he proves that he had taken all reasonable means by publishing and to the best of his power enforcing the said rules as regulations for the working of the mine to prevent such contravention or non-compliance.

Special Rules.

- Special rules. 24. The owner or agent of any mine to which this Act applies may, if he think fit, transmit to the inspector of the district, for approval by a Secretary of State, rules (referred to in this Act as special rules) for the conduct and guidance of the persons acting in the management of such mine or employed in or about the same, so as to prevent dangerous accidents, and to provide for the safety and proper discipline of the persons employed in or about the mine, and such special rules, when established, shall be signed by the inspector who is inspector of the district at the time such rules are established, and shall be observed in and about every such mine in the same manner as if they were enacted in this Act.

If any person who is bound to observe the special rules established for any mine acts in contravention of or fails to comply with any of such special rules, he shall be guilty of an offence against this Act, and also the owner and agent of such mine shall each be guilty of an offence against this Act, unless he proves that he had taken all reasonable means by publishing and to the best of his power enforcing the said rules as regulations for the working of the mine to prevent such contravention or non-compliance.

- Establishment of special rules. 25. The proposed special rules, together with a printed notice specifying that any objection to such rules on the ground of anything contained therein or omitted therefrom may be sent by any of the persons employed in the mine to the inspector of the district, at his address, stated in such notice, shall, during not less than two weeks before such rules are transmitted to the inspector, be posted up in like manner as is provided in this Act respecting the publication of special rules for the information of persons employed in the mine, and a certificate that such rules and notice have been posted up shall be sent to the inspector with the rules signed by the person sending the same.

If the rules are not objected to by the Secretary of State within forty days after their receipt by the inspector they shall be established.

If the owner or agent makes any false statement with respect to the

posting up of the rules and notices he shall be guilty of an offence against this Act.

26. If the Secretary of State is of opinion that the proposed special rules so transmitted, or any of them, do not sufficiently provide for the prevention of dangerous accidents in the mine, or for the safety of the persons employed in or about the mine, or are unreasonable, he may, within forty days after the rules are received by the inspector, object to the rules, and propose to the owner or agent in writing any modifications in the rules by way either of omission, alteration, substitution, or addition.

Secretary of State may object to special rules.

If the owner or agent do not, within twenty days after the modifications proposed by the Secretary of State are received by him, object in writing to them, the proposed special rules, with such modifications, shall be established.

If the owner or agent sends his objection in writing within the said twenty days to the Secretary of State, the matter shall be referred to arbitration, and the date of the receipt of such objection by the Secretary of State shall be deemed to be the date of the reference, and the rules shall be established as settled by an award on arbitration.

27. After special rules are established under this Act in any mine, the owner or agent of such mine may from time to time propose in writing to the inspector of the district for the approval of a Secretary of State any amendment of such rules or any new special rules, and the provisions of this Act with respect to the original special rules shall apply to all such amendments and new rules in like manner, as near as may be, as they apply to the original rules.

Amendment of special rules.

A Secretary of State may from time to time propose in writing to the owner or agent of a mine in which there are no special rules, any special rules, and to the owner or agent of a mine in which there are special rules, any new special rules, or any amendment to such special rules, and the provisions of this Act with respect to a proposal of the Secretary of State for modifying the special rules transmitted by the owner or agent of a mine shall apply to all such proposed special rules, new special rules, and amendments in like manner, as near as may be, as they apply to such proposal.

28. For the purpose of making known the special rules (if any) and the provisions of this Act to all persons employed in and about each mine to which this Act applies, an abstract of the Act supplied, on the application of the owner or agent of the mine, by the inspector of the district on behalf of a Secretary of State, and an entire copy of the special rules (if any) shall be published as follows :

Publication of rules.

- (1.) The owner or agent of such mine shall cause such abstract and rules (if any), with the name and address of the inspector of the district, and the name of the owner or agent appended thereto, to be posted up in legible characters, in some conspicuous place at or near the mine, where they may be conveniently read by the persons employed : and so often as the same become defaced, obliterated, or destroyed, shall cause them to be renewed with all reasonable despatch :
- (2.) The owner or agent shall supply a printed copy of the abstract and the special rules (if any) gratis to each person employed in or about the mine who applies for such copy at the office at which the persons immediately employed by such owner or agent are paid :
- (3.) Every copy of the special rules shall be kept distinct from any rules which depend only on the contract between the employer and employed.

If any owner or agent fail to act in compliance with this section he shall be guilty of an offence against this Act, but the owner shall not be deemed guilty if he prove that he has taken all reasonable means, by enforcing the observance of this section, to prevent such non-compliance.

Punishment
for defacing
notices.

29. Every person who pulls down, injures, or defaces any proposed special rules, notice, abstract, or special rules when posted up in pursuance of the provisions of this Act with respect to special rules, or any notice posted up in pursuance of the special rules, shall be guilty of an offence against this Act.

Certified copy
of special rules
to be evidence.

30. An inspector under this Act shall, when required, certify a copy which is shown to his satisfaction to be a true copy of any special rules which for the time being are established under this Act in any mine, and a copy so certified shall be evidence (but not to the exclusion of other proof) of such special rules and of the fact that they are duly established under this Act, and have been signed by the inspector.

PART III.—SUPPLEMENTAL.

Penalties.

Penalty for
offences
against Act.

31. Every person employed in or about a mine, other than an owner or agent, who is guilty of any act or omission which in the case of an owner or agent would be an offence against this Act, shall be deemed to be guilty of an offence against this Act.

Every person who is guilty of an offence against this Act shall be liable to a penalty not exceeding, if he is an owner or agent, twenty pounds, and if he is any other person two pounds, for each offence; and if an inspector has given written notice of any such offence, to a further penalty not exceeding one pound for every day after such notice that such offence continues to be committed.

Imprisonment
for wilful
neglect
endangering
life or limb.

32. Where a person who is an owner or agent or a person employed in or about a mine is guilty of any offence against this Act which, in the opinion of the court that tries the case, is one which was reasonably calculated to endanger the safety of the persons employed in or about the mine, or to cause serious personal injury to any of such persons, or to cause a dangerous accident, and was committed wilfully by the person, personal default, or personal negligence of the person accused, such person shall be liable, if the court is of opinion that a pecuniary penalty will not meet the circumstances of the case, to imprisonment, with or without hard labour, for a period not exceeding three months.

If any person feel aggrieved by any conviction made by a court of summary jurisdiction on determining any information under this Act, by which conviction imprisonment is adjudged in pursuance of this section, or by which conviction the sum adjudged to be paid amounts to or exceeds half the maximum penalty, the person so aggrieved may appeal therefrom, subject to the conditions and regulations following:

- (1.) The appeal shall be made to the next court of general or quarter sessions, [*The rest of this sub-section, and sub-sects. (2), (3), (4) and (5), were repealed by 47 & 48 Vict. c. 43.*]

Provided that in Scotland—

- (1.) This section shall not apply to any conviction made by a sheriff;
- (2.) The term "entering into a recognizance before a justice of the peace" shall mean finding caution with the clerk of the justices of the peace to the satisfaction of a justice of the peace; and the term "recognizance" shall mean a bond of caution;
- (3.) It shall be competent to any person empowered to appeal by this section, to appeal against a conviction by a sheriff to the next circuit court; or where there are no circuit courts to the High Court of Justiciary at Edinburgh, in the manner prescribed by such of the provisions of the Act of the twentieth year of the reign of King George the Second, chapter forty-three, and any Acts amending the same, as relate to appeals in matters criminal, and by and under the rules, limitations, conditions, and restrictions contained in the said provisions.

33. All offences and penalties under this Act, and all money and costs by this Act directed to be recovered as penalties, may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts before a court of summary jurisdiction.

Summary proceedings for offences, penalties, &c.

The "Court of Summary Jurisdiction," when hearing and determining an information or complaint, shall be constituted—

- (a) In England, either of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions, or of some magistrate or officer for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace and sitting alone or with others at some court or other place appointed for the administration of justice ; or
- (b) In Scotland, of two or more justices of the peace sitting as judges in a justice of the peace court, or of the sheriff or some other magistrate or officer for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace, and sitting alone or with others at some court or other place appointed for the administration of justice ; or
- (c) In Ireland, within the police district of Dublin metropolis, of one of the divisional justices of that district sitting at a police court within the district ; and elsewhere of two or more justices of the peace sitting in petty sessions at a place appointed for holding petty sessions.

34. In every part of the United Kingdom the following provisions shall have effect :

General provisions as to summary proceedings.

1. Any complaint or information made or laid in pursuance of this Act shall be made or laid within three months from the time when the matter of such complaint or information respectively arose :

[*Sub-sects. 2 and 3 were repealed by 47 & 48 Vict. c. 43.*]

4. The owner or agent may, if he think fit, be sworn and examined as an ordinary witness in the case where he is charged in respect of any contravention or non-compliance by another person :
5. The court shall, if required by either party, cause minutes of the evidence to be taken and preserved.

35. No prosecution shall be instituted against the owner or agent of a mine to which this Act applies for any offence under this Act which can be prosecuted before a court of summary jurisdiction, except by an inspector (*r*), or with the consent in writing of a Secretary of State ; and in the case of any offence of which the owner or agent of a mine is not guilty, if he proves that he had taken all reasonable means to prevent the commission thereof, an inspector shall not institute any prosecution against such owner or agent, if satisfied that he had taken such reasonable means as aforesaid.

Prosecution for offences.

36. In Scotland the following provisions shall have effect :

- (1.) All jurisdictions, powers, and authorities necessary for the court of summary jurisdiction under this Act are hereby conferred on that court :
- (2.) Every person found liable under this Act in any penalty, or to pay any money or costs by this Act directed to be recovered as penalties, shall be liable in default of immediate payment to be imprisoned for a term not exceeding three months, and the conviction and warrant may be in the form of No. 3 of Schedule K. of the Summary Procedure Act, 1864.

Summary proceedings for offences in Scotland.

37. Nothing in this Act shall prevent any person from being indicted or liable under any other Act, or otherwise to any other or higher penalty or

Persons not to be punished twice for the same offence.

(*r*) An information in the name of an inspector may be laid by an agent duly authorized by him in that behalf: *Foster v. Fyffe*, (1896) 2 Q. B. 104.

punishment than is provided for any offence by this Act, so that no person be punished twice for the same offence.

If the court before whom a person is charged with an offence under this Act think that proceedings ought to be taken against such person for such offence under any other Act or otherwise, the court may adjourn the case to enable such proceedings to be taken.

Application
of penalties.

38. Where a penalty is imposed under this Act for neglecting to send a notice of any explosion or accident or for any offence against this Act which has occasioned loss of life or personal injury, the Secretary of State may (if he think fit) direct such penalty to be paid to or distributed among the persons injured, and the relatives of any persons whose death may have been occasioned by such explosion, accident, or offence, or among some of them :

Provided that—

(1.) Such persons did not in his opinion occasion or contribute to occasion the explosion or accident, and did not commit and were not parties to committing the offence :

(2.) The fact of such payment or distribution shall not in any way affect or be receivable as evidence in any legal proceeding relative to or consequential on such explosion, accident, or offence :

Save as aforesaid, all penalties imposed in pursuance of this Act shall be paid into the receipt of her Majesty's Exchequer, and shall be carried to the Consolidated Fund.

In Ireland all penalties imposed and recovered under this Act shall be applied in manner directed by the Fines Act (Ireland), 1851, and any Act amending the same.

Miscellaneous.

As to question
whether mine
is a mine
under this Act.

39. If any question arises whether a mine is a mine to which this Act or the Coal Mines Regulation Act, 1872 (*s*), applies, such question shall be referred to a Secretary of State, whose decision thereon shall be final.

Notices may
be served by
post.

40. All notices under this Act shall be in writing or print, or partly in writing and partly in print, and all notices and documents required by this Act to be served or sent by or to an inspector or Secretary of State may be either delivered personally, or served and sent by post, by a pre-paid letter, and if served or sent by post shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post ; and in proving such service or sending, it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post.

Interpretation
of terms.

41. In this Act, unless the context otherwise requires,—

The term "mine" (*t*) includes every shaft in the course of being sunk, and every level and inclined plane in the course of being driven for commencing or opening any mine, or for searching for or proving minerals, and all the shafts, levels, planes, works, machinery, tramways, and sidings, both below ground and above ground, in and adjacent to a mine, and any such shaft, level, and inclined plane, and belonging to the mine :

The term "shaft" includes pit :

The term "plan" includes a map and section, and a correct copy or tracing of any original plan as so defined :

The term "owner" (*u*) when used in relation to any mine means any person or body corporate who is the immediate proprietor, or lessee,

(*s*) See sect. 83 of the Coal Mines Regulation Act, 1887, *post*, p. 632.

(*t*) See sect. 3, *ante*, and sect. 75 of the Coal Mines Regulation Act, 1887, *post*, p. 630. Under the Workmen's Compensation Act, 1897, employment in blasting rocks for a road to a new mine was held to be employment on, in, or about a mine: *Ellison v. Longden*, 18 Times L. Rep. 48.

(*u*) See note to sect. 13, *ante*, and compare the definition in sect. 75 of the Coal Mines Regulation Act, 1887, *post*, p. 630.

or occupier of any mine, or of any part thereof, and does not include a person or body corporate who merely receives a royalty, rent, or fine from a mine, or is merely the proprietor of a mine subject to any lease, grant, or license for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mines :

The term "agent" when used in relation to any mine means any person having, on behalf of the owner, care or direction of any mine, or of any part thereof :

[*The definition of "Secretary of State" was repealed by the Statute Law Revision Act, 1898 ; and the definition of "Summary Jurisdiction Acts" was repealed by the Statute Law Revision (No. 2) Act, 1893.*]

The term "Court of Summary Jurisdiction" means.—

In England and Ireland [*definition repealed by the Statute Law Revision Act, 1898.*]

In Scotland, any justice or justices of the peace, sheriff, or other magistrate, to the proceedings before whom for the trial or prosecution of any offence, or for the recovery of any penalty under any Act of Parliament, the provisions of the Summary Jurisdiction Acts may be applied.

42. In the application of this Act to Scotland—

- (1.) The term "chairman of quarter sessions" means the sheriff of the county :
- (2.) The term "sheriff" includes "sheriff substitute" :
- (3.) The Queen's and Lord Treasurer's Remembrancer shall perform the duties of a master of one of the superior courts under this Act :
- (4.) Notices of explosions, accidents, and loss of life, or personal injury shall be deemed to be sent to the inspector of the district on behalf of the Lord Advocate :
- (5.) Section sixteen of "The Public Health (Scotland) Act, 1867," shall be substituted for "section eight of the Nuisances Removal Act for England, 1855," as amended and extended by the Sanitary Act, 1866.

Application
of Act to
Scotland.

43. This Act shall apply to the Isle of Man, with the following modifications :

- (1.) The term "chairman of quarter sessions" means the governor, lieutenant-governor, or deputy-governor of the said isle for the time being :
- (2.) The clerk of the rolls shall perform the duties of a master of one of the superior courts under this Act :
- (3.) The law of the said isle as to the abatement or removal of nuisances affecting the health of her Majesty's subjects shall be substituted for section eight of "The Nuisances Removal Act for England, 1855," as amended and extended by "The Sanitary Act, 1866."

[*Sect. 44 was repealed by the Statute Law Revision (No. 2) Act, 1893, and sect. 45 and the schedule therein referred to were repealed by the Statute Law Revision Act, 1883.*]

Application
of Act to the
Isle of Man.

THE HOSIERY MANUFACTURE (WAGES) ACT, 1874.

37 & 38 VICT. c. 48.

An Act to provide for the payment of Wages without Stoppages in the Hosiery Manufacture (x). [30th July, 1874.]

Whereas (y) a custom has prevailed among the employers of artificers in the hosiery manufacture of letting out frames and machinery to the

(x) And see the Truck Act, 1831, *ante*.

(y) This preamble was repealed by the Statute Law Revision (No. 2) Act, 1893.

artificers employed by them, and it is desirable to prohibit such letting of frames and machinery, and the stoppage of wages for frame rents and charges in the hosiery manufacture :

Be it enacted by, &c., &c., as follows :

Wages to be paid without any stoppages whatever.

Contracts to stop wages and for frame rents illegal.

Penalty for bargaining to deduct and for deducting from wages.

Penalty for using frame otherwise than for the purpose for which same lent.

No action to be allowed in respect of any such bargaining.

Not to prevent the recovery by employer of any debt due to him from artificer.

Definition of terms.

1. In all contracts for wages the full and entire amount of all wages the earnings of labour in the hosiery manufacture shall be actually and positively made payable in net, in the current coin of the realm, and not otherwise, without any deduction or stoppage of any description whatever, save and except for bad and disputed workmanship.

2. All contracts to stop wages, and all contracts for frame rents and charges, between employer and artificers, shall be and are hereby declared to be illegal, null and void.

3. If any employer shall bargain to deduct ($\pm$), or shall deduct, directly or indirectly, from the wages of any artificer in his employ any part of such wages for frame rent and standing or other charges, or shall refuse or neglect to pay the same or any part thereof in the current coin of the realm, he shall forfeit a sum of five pounds for every offence, to be recovered by the said artificer or any other person suing for the same in the county court in the district where the offence is committed, with full costs of suit.

4. If any frame or machine which shall have been entrusted to any artificer or other person by his employer for the purpose of being used in the hosiery manufacture for such employer, or in any process incident to such manufacture, shall, whilst the same shall be so entrusted, be worked, used, or employed without the consent in writing of such employer or other person so entrusting such frame or machine, in the manufacture of any goods or articles whatever for any other person than the person by whom such frame or machine shall have been so entrusted, then and in every such case the artificer or other person to whom the same shall have been so entrusted shall forfeit and pay the sum of ten shillings for every day on any part of which any such frame or machine shall have been so worked, used, or employed, to be recoverable by and for the benefit of the person who shall have so entrusted the same, in the county court for the district where the offence shall have been committed, with full costs of suit.

5. No action, suit, or set-off between employer and artificer shall be allowed for any deduction or stoppage of wages, nor for any contract hereby declared illegal.

6. Nothing in this Act contained shall extend to prevent the recovery in the ordinary course of law, by suit brought or commenced for the purpose, of any debt due from the artificer to the employer.

7. Within the meaning and for the purposes of this Act, all workmen, labourers, and other persons in any manner engaged in the performance of any employment or operation, of what nature soever, in or about the hosiery manufacture, shall be and be deemed "artificers;" and within the meaning and for the purposes aforesaid, all masters, foremen, managers, clerks, contractors, sub-contractors, middlemen, and other persons engaged in the hiring, employment, or superintendence of the labour of any such artificers shall be and be deemed to be "employers;" and, within the meaning and for the purposes of this Act, any money or other thing had or contracted to be paid, delivered, or given as a recompense, reward, or remuneration for any labour done or to be done, whether within a certain time or to a certain amount, or for a time or for an amount uncertain, shall be deemed and taken to be the wages of such labour; and, within the meaning and for the purposes aforesaid, any agreement, understanding, device, contrivance, collusion, or arrangement whatsoever on the subject of wages, whether written or oral, whether direct or indirect, to which the employer and artificers are

(2) Deductions for fines for absence without permission, not within this section: *Willis v. Thorp*, L. R. 10 Q. B. 383.

parties or are assenting, or by which they are actually bound to each other, or whereby either of them shall have endeavoured to impose an obligation on the other of them, shall be and be deemed a "contract."

[*Sect. 8 was repealed by the Statute Law Revision (No. 2) Act, 1893.*]

9. This Act may be cited for all purposes as the Hosiery Manufacture (Wages) Act, 1874.

Short title.

THE METALLIFEROUS MINES REGULATION ACT, 1875.

38 & 39 VICT. c. 39.

An Act to amend the provisions of the Metalliferous Mines Regulation Act, 1872, with respect to the Annual Returns from Mines.
[19th July, 1875.]

Whereas by section ten of the Metalliferous Mines Regulation Act, 1872, the owner and agent of every mine was required to send annually such return as is mentioned in that section, and it is expedient to make further provision with respect to such return :

35 & 36 Vict.
c. 77, s. 10.

Be it therefore enacted by, &c., &c., as follows :

1. The owner or agent of every mine to which the Metalliferous Mines Regulation Act, 1872, applies shall, on or before the first day of February in every year, send to the inspector of the district on behalf of a Secretary of State a correct return, specifying, with respect to such mine, for the year ending on the preceeding thirty-first day of December, the quantity in statute weight of the mineral dressed, and of the undressed mineral which has been sold, treated, or used, during that year, and the number of persons ordinarily employed in or about such mine, below ground and above ground, distinguishing those who are employed below ground and above ground, and distinguishing the different classes and ages of the persons so employed whose hours of labour are regulated by the Metalliferous Mines Regulation Act, 1872.

Returns by
owners and
agents of
mines.

The return shall be in such form as may be from time to time prescribed by a Secretary of State, and the inspector of the district on behalf of a Secretary of State shall from time to time, on application, furnish forms for the purpose of such return.

Every owner or agent of a mine who fails to comply with this section, or makes any return which is to his knowledge false in any particular, shall be guilty of an offence against the Metalliferous Mines Regulation Act, 1872.

Provided that—

- (1.) In any mine where not more than twelve persons are employed underground, the returns specifying the quantity of mineral produced shall be made by the barmaster or other local officer, if any, employed to collect the dues or royalty ; and
- (2.) Where there is such a barmaster or other officer the owner or agent of such mine shall not be required to send any return specifying the number of persons employed in or about such mine.

[*Sect. 2 was repealed by the Statute Law Revision (No. 2) Act, 1893.*]

3. This Act shall be construed as one with the Metalliferous Mines Regulation Act, 1872, and that Act and this Act may be cited together as the Metalliferous Mines Regulation Acts, 1872 and 1875, and this Act may be cited separately as the Metalliferous Mines Regulation Act, 1875.

Short title and
construction.

[*Sect. 4 repealed sect. 10 of the Metalliferous Mines Regulation Act, 1872, and was itself repealed by the Statute Law Revision Act, 1883.*]

THE CONSPIRACY AND PROTECTION OF PROPERTY ACT, 1875.

38 & 39 VICT. c. 86.

An Act for amending the Law relating to Conspiracy, and to the Protection of Property, and for other purposes.

[13th August, 1875.]

Be it enacted by, &c., &c., as follows :

Short title.

1. This Act may be cited as the Conspiracy and Protection of Property Act, 1875.

[Sect. 2 was repealed by the Statute Law Revision (No. 2) Act, 1893.]

Conspiracy, and Protection of Property.

Amendment
of law as to
conspiracy in
trade disputes

3. An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute between employers and workmen (*a*) shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime (*b*).

Nothing in this section shall exempt from punishment any persons guilty of a conspiracy for which a punishment is awarded by any Act of Parliament.

Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace, or sedition, or any offence against the state or the sovereign.

A crime for the purposes of this section means an offence punishable on indictment, or an offence which is punishable on summary conviction, and for the commission of which the offender is liable under the statute making the offence punishable to be imprisoned either absolutely or at the discretion of the court as an alternative for some other punishment.

Where a person is convicted of any such agreement or combination as aforesaid to do or procure to be done an act which is punishable only on summary conviction, and is sentenced to imprisonment, the imprisonment shall not exceed three months, or such longer time, if any, as may have been prescribed by the statute for the punishment of the said act when committed by one person.

Breach of
contract by
persons em-
ployed in
supply of gas
or water.

4. Where a person employed by a municipal authority or by any company or contractor upon whom is imposed by Act of Parliament the duty, or who have otherwise assumed the duty of supplying any city, borough, town, or place, or any part thereof, with gas or water, wilfully and maliciously breaks a contract of service with that authority or company or contractor, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants of that city, borough, town, place, or part, wholly or to a great extent of their supply of gas or water, he shall on conviction thereof by a court of summary jurisdiction or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds or to be imprisoned for a time not exceeding three months, with or without hard labour.

Every such municipal authority, company, or contractor as is mentioned in this section shall cause to be posted up, at the gasworks or waterworks,

(*a*) This expression does not include a dispute on trade union matters between workmen who are members of a trade union and an employer of non-union workmen who refuses to employ members of a trade union: *Quinn v. Leatham*, (1901) A. C. 495, in which it was also held by Lord Macnaghten and Lord Lindley that this section has no application to civil actions, but is confined entirely to criminal proceedings.

(*b*) Strikes are thus to a certain extent legalized: Lord Coleridge, C. J., in *Tribou v. Lawson*, (1891) 2 Q. B. 515; Lindley and Kay, L. JJ., in *Lyons v. Wilkins*, (1896) 1 Ch. 811.

as the case may be, belonging to such authority or company or contractor, a printed copy of this section in some conspicuous place where the same may be conveniently read by the persons employed, and as often as such copy becomes defaced, obliterated, or destroyed, shall cause it to be renewed with all reasonable despatch.

If any municipal authority or company or contractor make default in complying with the provisions of this section in relation to such notice as aforesaid, they or he shall incur on summary conviction a penalty not exceeding five pounds for every day during which such default continues, and every person who unlawfully injures, defaces, or covers up any notice so posted up as aforesaid in pursuance of this Act, shall be liable on summary conviction to a penalty not exceeding forty shillings.

5. Where any person wilfully and maliciously breaks a contract of service or of hiring, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life, or cause serious bodily injury, or to expose valuable property whether real or personal to destruction or serious injury, he shall on conviction thereof by a court of summary jurisdiction, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

Breach of contract involving injury to persons or property.

Miscellaneous.

6. Where a master, being legally liable to provide for his servant or apprentice necessary food, clothing, medical aid, or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, whereby the health of the servant or apprentice is or is likely to be seriously or permanently injured, he shall on summary conviction (*c*) be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding six months, with or without hard labour.

Penalty for neglect by master to provide food, clothing, &c. for servant or apprentice.

7. Every person (*d*) who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority,—

Penalty for intimidation or annoyance by violence or otherwise.

1. Uses violence to or intimidates (*e*) such other person or his wife or children, or injures his property; or
2. Persistently follows (*f*) such other person about from place to place; or,
3. Hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or,

(*c*) See also sect. 26 of the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), *ante*, p. 540.

(*d*) Although sect. 7 probably arose out of trade disputes, it is not confined to trade disputes or to disputes between masters and men: see Chitty, L. J., in *Lyons v. Wilkins* (1899), 1 Ch. 255; *Farmer v. Wilson*, 69 L. J., Q. B. 496. In *Lyons v. Wilkins*, the Court of Appeal dealt with the general effect of this section.

(*e*) In *Connor v. Kent*, *Gibson v. Lawson*, *Curran v. Treleaven*, (1891) 2 Q. B. 545, the Court refused to attempt to define the meaning of "intimidation," but held that there was no intimidation in a case where the respondent told the appellant, a fellow-workman, that, unless the appellant joined the respondent's trade union, the trade union had decided to strike; and the employer of the workmen dismissed the appellant in order to avoid a strike; nor in a case where the secretaries of trade unions told the respondent that if he did not cease to employ non-union men, they would call out all the members of their unions employed by him, and on his refusing to comply they accordingly called out all the union men in his employ. The Court also expressed dissent from *dicta* in *R. v. Druitt*, 10 Cox, C. C. 592, and *R. v. Bunn*, 12 Cox, C. C. 316.

(*f*) *Smith v. Thomasson*, 62 L. T. Rep. 68.

4. Watches or besets (*g*) the house or other place where such other person resides, or works, or carries on business, or happens to be, or the approach to such house or place; or,

5. Follows such other person with two or more other persons in a disorderly manner in or through any street or road,

shall, on conviction (*h*) thereof by a court of summary jurisdiction, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

Attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section.

Reduction of penalties.

8. Where in any Act relating to employers or workmen a pecuniary penalty is imposed in respect of any offence under such Act, and no power is given to reduce such penalty, the justices or Court having jurisdiction in respect of such offence may, if they think it just so to do, impose by way of penalty in respect of such offence any sum not less than one fourth of the penalty imposed by such Act.

Legal Proceedings.

Power for offender under this Act to be tried on indictment and not by court of summary jurisdiction.

9. Where a person is accused before a court of summary jurisdiction of any offence made punishable by this Act, and for which a penalty amounting to twenty pounds, or imprisonment, is imposed, the accused may, on appearing before the court of summary jurisdiction, declare that he objects to being tried for such offence by a court of summary jurisdiction, and thereupon the court of summary jurisdiction may deal with the case in all respects as if the accused were charged with an indictable offence and not an offence punishable on summary conviction, and the offence may be prosecuted on indictment accordingly.

Proceedings before court of summary jurisdiction.

10. Every offence under this Act which is made punishable on conviction by a court of summary jurisdiction or on summary conviction, and every penalty under this Act recoverable on summary conviction, may be prosecuted and recovered in manner provided by the Summary Jurisdiction Act.

Regulations as to evidence.

11. Provided, that upon the hearing and determining of any indictment or information under sections four, five, and six of this Act, the respective parties to the contract of service, their husbands or wives shall be deemed and considered as competent witnesses.

Appeal to quarter sessions.

12. In England or Ireland, if any party feels aggrieved by any conviction made by a court of summary jurisdiction on determining any information under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following:

(1.) The appeal shall be made to some court of general or quarter sessions.

[*The rest of this section was repealed by 47 & 48 V. c. 43.*]

(*g*) For the meaning of watching and besetting see *Lyons v. Wilkins*, (1896) 1 Ch. 811; *Lyons v. Wilkins*, (1899) 1 Ch. 255; *Charnock v. Court*, (1899) 2 Ch. 35; *Walters v. Green*, (1899) 2 Ch. 696; in which cases the watching and besetting complained of amounted to a common law nuisance, and injunctions were granted to restrain the defendants from continuing it. Picketing consists in posting members of a trades union at all the approaches to the works struck against for the purpose of observing and reporting the workmen going to or coming from the works, and of using such influence as may be in their power to prevent the workmen from accepting work there. Report of Trades Union Comm., 9th March, 1869, par. 68. And see *R. v. Drutt*, 10 Cox, C. C. 592, which arose out of the tailors' strike in 1867.

(*h*) The acts complained of ought to be specified in the conviction by magistrates: *Reg. v. McKenzie*, (1892) 2 Q. B. 519; *Lyons v. Wilkins*, (1899) 1 Ch. 255; *Ex parte Wilkins*, 72 L. T. Rep. 567.

*Definitions.***13.** In this Act—

The expression “the Summary Jurisdiction Act” means the Act of the session of the eleventh and twelfth years of the reign of her present Majesty, chapter forty-three, intituled “An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders,” inclusive of any Acts amending the same (*i*); and

The expression “court of summary jurisdiction” means—

- (1.) As respects the city of London, the lord mayor or any alderman of the said city sitting at the Mansion House or Guildhall justice room; and
- (2.) As respects any police court division in the metropolitan police district, any metropolitan police magistrate sitting at the police court for that division; and
- (3.) As respects any city, town, liberty, borough, place, or district for which a stipendiary magistrate is for the time being acting, such stipendiary magistrate sitting at a police court or other place appointed in that behalf; and
- (4.) Elsewhere, any justice or justices of the peace to whom jurisdiction is given by the Summary Jurisdiction Act: Provided that, as respects any case within the cognisance of such justice or justices as last aforesaid, an information under this Act shall be heard and determined by two or more justices of the peace in petty sessions sitting at some place appointed for holding petty sessions.

Nothing in this section contained shall restrict the jurisdiction of the lord mayor or any alderman of the city of London, or of any metropolitan police or stipendiary magistrate, in respect of any Act or jurisdiction which may now be done or exercised by him out of court.

14. The expression “municipal authority” in this Act means any of the following authorities, that is to say, the Metropolitan Board of Works, the Common Council of the city of London, the Commissioners of Sewers of the city of London, the town council of any borough for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled “An Act to provide for the Regulation of Municipal Corporations in England and Wales,” and any Act amending the same (*j*), any commissioners, trustees, or other persons invested by any local Act of Parliament with powers of improving, cleansing, lighting, or paving any town, and any local board.

Any municipal authority or company or contractor who has obtained authority by or in pursuance of any general or local Act of Parliament to supply the streets of any city, borough, town, or place, or of any part thereof, with gas, or which is required by or in pursuance of any general or local Act of Parliament to supply water on demand to the inhabitants of any city, borough, town or place, or any part thereof, shall for the purposes of this Act be deemed to be a municipal authority or company or contractor upon whom is imposed by Act of Parliament the duty of supplying such city, borough, town, or place, or part thereof, with gas or water.

15. The word “maliciously” used in reference to any offence under this Act shall be construed in the same manner as it is required by the fifty-eighth section of the Act relating to malicious injuries to property, that is to say, the Act of the session of the twenty-fourth and twenty-fifth years of the reign of her present Majesty, chapter ninety-seven, to be

General definitions:

“The Summary Jurisdiction Act.”

“Court of summary jurisdiction.”

Definitions of “municipal authority” and “public company.”

“Maliciously” in this Act construed as in Malicious Injuries to Property Act.

(i) See the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49).

(j) See the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 242.

construed in reference to any offence committed under such last-mentioned Act (k).

Saving Clause.

Saving as to
sea service.

16. Nothing in this Act shall apply to seamen (l) or to apprentices to the sea service.

17. [This section, repealing several former Acts, was repealed by the Statute Law Revision Act, 1883, with the exception of the following clause:]

- (1.) Any order for wages or further sum of compensation in addition to wages made in pursuance of section sixteen of "The Summary Jurisdiction (Ireland) Act, 1851," may be enforced in like manner as if it were an order made by a court of summary jurisdiction in pursuance of the Employers and Workmen Act, 1875, and not otherwise.

Application of Act to Scotland.

Application
to Scotland.
Definitions.

18. This Act shall extend to Scotland, with the modifications following: that is to say,

- (1.) The expression "municipal authority" means the town council of any royal or parliamentary burgh, or the commissioners of police of any burgh, town, or populous place under the provisions of the General Police and Improvement (Scotland) Act, 1862, or any local authority under the provisions of the Public Health (Scotland) Act, 1867:

(2.) [Repealed by the Statute Law Revision (No. 2) Act, 1893.]

- (3.) The expression "the court of summary jurisdiction" means the sheriff of the county or any one of his substitutes.

Recovery of
penalties, &c.
in Scotland.

19. In Scotland the following provisions shall have effect in regard to the prosecution of offences, recovery of penalties, and making of orders under this Act:

- (1.) Every offence under this Act shall be prosecuted, every penalty recovered, and every order made at the instance of the Lord Advocate, or the Procurator Fiscal of the sheriff court:

(2.) The proceedings may be on indictment in the Court of Justiciary [in Edinburgh or on circuit (m)] or in a sheriff court, or may be taken summarily in the sheriff court under the provisions of the Summary Procedure Act, 1864:

- (3.) Every person found liable on conviction to pay any penalty under this Act shall be liable, in default of payment within a time to be fixed in the conviction, to be imprisoned for a term, to be also fixed therein, not exceeding two months, or until such penalty shall be sooner paid, and the conviction and warrant may be in the form of No. 3 of Schedule K. of the Summary Procedure Act, 1864:

(4.) In Scotland all penalties imposed in pursuance of this Act shall be paid to the clerk of the court imposing them, and shall by him be accounted for and paid to the Queen's and Lord Treasurer's Remembrancer, and be carried to the Consolidated Fund.

Appeal in
Scotland as
prescribed by
20 Geo. 2,
c. 13.

20. In Scotland it shall be competent to any person to appeal against any order or conviction under this Act [to the next circuit Court of Justiciary, or where there are no circuit courts (m)] to the High Court of

(k) Under that section it is unnecessary to prove malice against the owner of the property.

(l) This section means that the punishments prescribed by the Act are not to fall upon seamen: *Kennedy v. Cowie*, (1891) 1 Q. B. 771. "Seamen" means seamen as defined by the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60): *R. v. Lynch*, (1898) 1 Q. B. 61.

(m) Words in brackets repealed by the Statute Law Revision (No. 2) Act, 1893.

Justiciary [*at Edinburgh,*] in the manner prescribed by and under the rules, limitations, conditions, and restrictions, contained in the Act passed in the twentieth year of the reign of his Majesty King George the Second, chapter forty-three, in regard to appeals to circuit courts in matters criminal, as the same may be altered or amended by any Acts of Parliament for the time being in force.

Application of Act to Ireland.

21. This Act shall extend to Ireland, with the modifications following : Application to Ireland.
that is to say,

[*Definitions of "the Summary Jurisdiction Act" and "court of summary jurisdiction," repealed by the Statute Law Revision (No. 2) Act, 1893.*]

The court of summary jurisdiction, when hearing and determining complaints under this Act, shall in the police district of Dublin metropolis be constituted of one or more of the divisional justices of the said district, and elsewhere in Ireland of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions :

The expression "municipal authority" shall be construed to mean the town council of any borough for the time being, subject to the Act of the session of the third and fourth years of the reign of her present Majesty, chapter one hundred and eight, entitled "An Act for the Regulation of Municipal Corporations in Ireland," and any commissioners invested by any general or local Act of Parliament, with power of improving, cleansing, lighting, or paving any town or township.

THE EMPLOYERS AND WORKMEN ACT, 1875.

38 & 39 VICT. C. 90.

An Act to enlarge the Powers of County Courts in respect of Disputes between Employers and Workmen, and to give other Courts a limited civil jurisdiction in respect of such Disputes. [13th August, 1875.]

Be it enacted by, &c., &c., as follows :—

Preliminary.

1. This Act may be cited as the Employers and Workmen Act, 1875. Short title.
[*Sect. 2 was repealed by the Statute Law Revision (No. 2) Act, 1893.*]

PART I.

Jurisdiction—Jurisdiction of County Court.

3. In any proceeding before a county court in relation to any dispute between an employer and a workman arising out of or incidental to their relation as such (which dispute is hereinafter referred to as a dispute under this Act) the court may, in addition to any jurisdiction it might have exercised if this Act had not passed, exercise all or any of the following powers : that is to say,

(1.) It may adjust and set off the one against the other all such claims on the part either of the employer or of the workman, arising out of or incidental to the relation between them, as the court may find to be subsisting, whether such claims are liquidated or unliquidated, and are for wages, damages, or otherwise (a) ; and,

Power of county court as to ordering of payment of money, set-off, and rescission of contract and taking security.

(a) The proprietors of a coal mine made a claim against a miner in their employ for absenting himself from their service. On three successive days

- (2.) If, having regard to all the circumstances of the case, it thinks it just to do so, it may rescind any contract between the employer and the workman upon such terms as to the apportionment of wages or other sums due thereunder, and as to the payment of wages or damages, or other sums due, as it thinks just; and,
- (3.) Where the court might otherwise award damages for any breach of contract it may, if the defendant be willing to give security to the satisfaction of the court for the performance by him of so much of his contract as remains unperformed, with the consent of the plaintiff, accept such security, and order performance of the contract accordingly, in place either of the whole or of the damages which would otherwise have been awarded, or some part of such damages.

The security shall be an undertaking by the defendant and one or more surety or sureties that the defendant will perform his contract, subject on non-performance to the payment of a sum to be specified in the undertaking.

Any sum paid by a surety on behalf of a defendant in respect of a security under this Act, together with all costs incurred by such surety in respect of such security, shall be deemed to be a debt due to him from the defendant; and where such security has been given in or under the direction of a court of summary jurisdiction, that court may order payment to the surety of the sum which has so become due to him from the defendant.

Court of Summary Jurisdiction.

Jurisdiction of justices in disputes between employers and workmen.

4. A dispute (o) under this Act between an employer and a workman may be heard and determined (p) by a court of summary jurisdiction, and such court, for the purposes of this Act, shall be deemed to be a court of civil jurisdiction, and in a proceeding in relation to any such dispute the court may order payment of any sum which it may find to be due as wages, or damages (q), or otherwise, and may exercise all or any of the powers by this Act conferred on a county court: Provided that in any proceeding in relation to any such dispute the court of summary jurisdiction—

- (1.) Shall not exercise any jurisdiction where the amount claimed exceeds ten pounds (r); and

he, being a unionist, refused to go down into the mine in the cage at the same time as a non-unionist. The Court held that his breach of contract was such as to entitle his employers to substantial damages: *Bones v. Press*, (1894) 1 Q. B. 202.

(o) Absenting himself without notice by a workman, and complaint thereon to the justices by the employer, amounts to a dispute so as to give justices jurisdiction: *Clemonson v. Hubbard*, 1 Ex. Div. 179. And see *Leslie v. Fitzpatrick*, 3 Q. B. D. 229, where the workman was an infant. See also *Grainger v. Bagnall*, 6 Q. B. D. 182. When a workman has committed a breach of contract, his master does not lose his rights under the Act by continuing to employ the workman: *Hymnstay Collieries v. Edwards*, 79 L. T. Rep. 378.

(p) The jurisdiction of a court of summary jurisdiction under this section is not affected by the provisions of the Truck Act, 1896: *Barton Lime Firms Co. v. Howe*, (1900) 2 Q. B. 232.

(q) In *Hudley v. Haslam*, 3 Q. B. D. 181, it was held that an employer might proceed against his workman before the justices for negligently damaging materials, although the workman had sued him for wages in the county court, and recovered them.

(r) A workman was engaged for one year at weekly wages. Soon after he intimated his intention of finally and absolutely breaking his contract, and he did not return again to his work. Under this section his employers recovered 10*l.* damages against him for twelve days' absence from work. It was held

(2.) Shall not make an order for the payment of any sum exceeding ten pounds, exclusive of the costs incurred in the case; and

(3.) Shall not require security to an amount exceeding ten pounds from any defendant or his surety or sureties.

5. Any dispute between an apprentice to whom this Act applies and his master, arising out of or incidental to their relation as such, (which dispute is hereinafter referred to as a dispute under this Act,) may be heard and determined by a court of summary jurisdiction.

6. In a proceeding before a court of summary jurisdiction in relation to a dispute under this Act between a master and an apprentice (s), the court shall have the same powers as if the dispute were between an employer and a workman, and the master were the employer and the apprentice the workman, and the instrument of apprenticeship a contract between an employer and a workman, and shall also have the following powers:—

(1.) It may make an order directing the apprentice to perform his duties under the apprenticeship; and,

(2.) If it rescinds the instrument of apprenticeship it may, if it thinks it just so to do, order the whole or any part of the premium paid on the binding of the apprentice to be repaid.

Where an order is made directing an apprentice to perform his duties under the apprenticeship, the court may from time to time, if satisfied after the expiration of not less than one month from the date of the order that the apprentice has failed to comply therewith, order him to be imprisoned for a period not exceeding fourteen days.

7. In a proceeding before a court of summary jurisdiction in relation to a dispute under this Act between a master and an apprentice, if there is any person liable under the instrument of apprenticeship for the good conduct of the apprentice, that person may, if the court so direct, be summoned in like manner as if he were the defendant in such proceeding to attend on the hearing of the proceeding, and the court may, in addition to or in substitution for any order which the court is authorised to make against the apprentice, order the person so summoned to pay damages for any breach of the contract of apprenticeship to an amount not exceeding the limit (if any) to which he is liable under the instrument of apprenticeship.

The court may, if the person so summoned, or any other person, is willing to give security to the satisfaction of the court for the performance by the apprentice of his contract of apprenticeship, accept such security instead of or in mitigation of any punishment which it is authorised to inflict upon the apprentice.

PART II.

Procedure.

8. A person may give security under this Act in a county court or court of summary jurisdiction by an oral or written acknowledgment in or under the direction of the court of the undertaking or condition by which and the sum for which he is bound, in such manner and form as may be prescribed by any rule for the time being in force, and in any case where security is so given, the court in or under the direction of which it is given may order payment of any sum which may become due in pursuance of such security.

The Lord Chancellor may from time to time make, and when made,

that they could not take any further proceedings under the Act in respect of the workman's subsequent absence from work: *James v. Evans*, (1897) 2 Q. B. 180.

(s) If the complaint against the apprentice amounts to a charge of felony he is entitled to the verdict of a jury: *Re Jacklin*, 2 D. & L. 103.

Jurisdiction of justices in disputes between masters and apprentices.

Powers of justices in respect of apprentices.

Order against surety of apprentice, and power to friend of apprentice to give security.

Mode of giving security.

Summary
proceedings.

rescind, alter, and add to, rules with respect to giving security under this Act.

9. Any dispute or matter in respect of which jurisdiction is given by this Act to a court of summary jurisdiction shall be deemed to be a matter on which that court has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Act (*l*), but shall not be deemed to be a criminal proceeding; and all powers by this Act conferred on a court of summary jurisdiction shall be deemed to be in addition to and not in derogation of any powers conferred on it by the Summary Jurisdiction Act, except that a warrant shall not be issued under that Act for apprehending any person other than an apprentice for failing to appear to answer a complaint in any proceeding under this Act, and that an order made by a court of summary jurisdiction under this Act for the payment of any money shall not be enforced by imprisonment except in the manner and under the conditions by this Act provided; and no goods or chattels shall be taken under a distress ordered by a court of summary jurisdiction which might not be taken under an execution issued by a county court.

A court of summary jurisdiction may direct any sum of money, for the payment of which it makes an order under this Act, to be paid by instalments, and may from time to time rescind or vary such order.

Any sum payable by any person under the order of a court of summary jurisdiction in pursuance of this Act, shall be deemed to be a debt due from him in pursuance of a judgment of a competent court within the meaning of the fifth section of the Debtors Act, 1869 (*n*), and may be enforced accordingly; and as regards any such debt a court of summary jurisdiction shall be deemed to be a court within the meaning of the said section.

The Lord Chancellor may from time to time make, and when made, rescind, alter, and add to, rules for carrying into effect the jurisdiction by this Act given to a court of summary jurisdiction, and in particular for the purpose of regulating the costs of any proceedings in a court of summary jurisdiction, with power to provide that the same shall not exceed the costs which would in a similar case be incurred in a county court; and any rules so made, in so far as they relate to the exercise of jurisdiction under the said fifth section of the Debtors Act, 1869, shall be deemed to be prescribed rules within the meaning of the said section.

PART III.—DEFINITIONS AND MISCELLANEOUS.

*Definitions.*Definition of
"Workman:"

10. In this Act—

The expression "workman" does not include a domestic or menial servant (*r*), but save as aforesaid, means any person who, being a labourer, servant in husbandry (*w*), journeyman, artificer, handicraftsman, miner,

(*l*) The jurisdiction of the court is not limited by the Summary Jurisdiction Acts to matters arising within six months of the summons: *Charles v. Mortgagees of Plymouth Works*, 60 L. J., M. C. 20.

(*n*) Sub-sect. [b] of that section was repealed by the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 169.

(*r*) As to what is a menial servant see *Nowlan v. Ahlett*, 2 C., M. & R. 54, and other cases cited *ante*, p. 66. In *Pearce v. Lansdowne*, 69 L. T. Rep. 316, a potman at a public-house was held to be a domestic or menial servant within this section.

(*w*) It was held that a person engaged by the owner of a farm to keep the general accounts of the farm, to weigh out food for cattle, to set men to work, to lend a hand to anything if wanted, and in all things to carry out the orders given to him, was not a "servant in husbandry" within 4 Geo. 4, c. 34, but rather in the position of a steward or bailiff: *Davies v. Berwick*, 30 L. J., M. C. 84.

or otherwise engaged in manual labour (*x*), whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer (*y*), whether the contract be made before or after the passing of this Act, be express or implied, oral or in writing, and be a contract of service or a contract personally to execute any work or labour.

[*The rest of the section was repealed by the Statute Law Revision (No. 2) Act, 1893.*]

11. In the case of a child, young person, or woman subject to the provisions of the Factory Acts, 1833 to 1874 (*z*), any forfeiture on the ground of absence or leaving work shall not be deducted from or set off against a claim for wages or other sum due for work done before such absence or leaving work, except to the amount of the damage (if any) which the employer may have sustained by reason of such absence or leaving work (*a*).

Set-off in case of factory workers.

Application.

12. This Act, in so far as it relates to apprentices, shall apply only to an apprentice to the business of a workman as defined by this Act upon whose binding either no premium is paid, or the premium (if any) paid does not exceed twenty-five pounds; and to an apprentice bound under the provisions of the Acts relating to the relief of the poor.

Application to apprentices.

Saving Clause.

13. Nothing in this Act shall take away or abridge any local or special jurisdiction touching apprentices.

Saving of special jurisdiction, and seamen.

This Act shall not apply to seamen or to apprentices to the sea service (*b*).

(*x*) This statute applies only to persons engaged in manual labour, and has therefore been held not to apply to an omnibus conductor: *Morgan v. London General Omnibus Co.*, 13 Q. B. D. 832; nor to the driver of a tram car: *Cook v. North Metropolitan Tramways Co.*, 18 Q. B. D. 683; nor to a person employed to originate and develop ideas and inventions suitable to the business carried on by his employers: *Jackson v. Hill*, 13 Q. B. D. 618; nor to a railway guard: *Hunt v. Great Northern Railway Co.*, (1891) 1 Q. B. 601; nor to a grocer's assistant: *Bond v. Lawrence*, (1892) 1 Q. B. 226; nor to a hairdresser: *R. v. Louth Justices*, (1900) 2 L. R. 714. But a potter's printer under a contract with his employers to do work in which he was assisted by "transferrers" whom he engaged and paid was held to be a workman within the Act: *Grainger v. Ayusley*, 6 Q. B. D. 182; and so was a trolley driver employed by a wharfinger: *Yarmouth v. France*, 19 Q. B. D. 647.

(*y*) A workman employed in a coal mine by a "buttyman" who had contracted with the mine owners to bring up coal at so much per ton, was held to be in the service of the mine owners within this Act: *Brown v. Butterley Coal Co.*, 53 L. T. Rep. 965. But this case was distinguished in *Marrow v. Flinby, &c., Co.*, (1898) 2 Q. B. 588, where a workman employed in a coal mine by an independent contractor, who had contracted with the mine owners for sinking a shaft, was held not to be in the service of the mine owners within this Act, although, under the Coal Mines Regulation Act, 1887, *post*, p. 600, and the rules of the mine, he was subject to the control of the manager of the mine while working in it. This latter case was followed in *Fitzpatrick v. Evans*, (1901) 1 K. B. 756, affirmed 50 W. R. 290.

(*z*) These Acts were repealed by the Factory and Workshop Act, 1878, sect. 102 of which provided that any enactment referring to Acts repealed by that Act should be construed to refer to that Act and the corresponding enactment thereof. The Act of 1878 was wholly repealed by the Factory and Workshop Act, 1901, *post*, p. 726. See the note to the title of that Act.

(*a*) See *Warburton v. Heyworth*, 6 Q. B. Div. 1, distinguishing *Gregson v. Watson*, 34 L. T. N. S. 143.

(*b*) For the purposes of this Act solely, this clause excluding seamen and

PART IV.

Application of Act to Scotland.

Application
to Scotland.

14. This Act shall extend to Scotland, with the modifications following :
that is to say,

Definitions.

In this Act with respect to Scotland—

The expression " county court " means the ordinary sheriff court of the county :

The expression " the court of summary jurisdiction " means the small debt court of the sheriff of the county :

The expression " sheriff " includes sheriff substitute :

The expression " instrument of apprenticeship " means indenture :

The expression " plaintiff " or " complainant " means pursuer or complainer :

The expression " defendant " includes defender or respondent :

The expression " the Summary Jurisdiction Act " means the Act of the seventh year of the reign of his Majesty King William the Fourth and the first year of the reign of her present Majesty, chapter forty-one, intituled " An Act for the more effectual recovery of small debts in the Sheriff Courts, and for regulating the establishment of circuit courts for the trial of small debt causes by the sheriffs in Scotland," and the Acts amending the same :

The expression " surety " means cautioner :

This Act shall be read and construed, as if for the expression " the Lord Chancellor," wherever it occurs therein, the expression " the Court of Session by Act of sederunt " were substituted.

All jurisdictions, powers, and authorities necessary for the purposes of this Act are hereby conferred on sheriffs in their ordinary or small debt courts, as the case may be, who shall have full power to make any order on any summons, petition, complaint, or other proceeding under this Act, that any county court or court of summary jurisdiction is empowered to make on any complaint or other proceeding under this Act.

Any decree or order pronounced or made by a sheriff under this Act shall be enforced in the same manner and under the same conditions in and under which a decree or order pronounced or made by him in his ordinary or small debt court, as the case may be, is enforced.

PART V.

Application of Act to Ireland.

Application
to Ireland.

15. This Act shall extend to Ireland, with the modifications following :
that is to say,

The expression " county court " shall be construed to mean civil bill court :

The expression " Lord Chancellor " shall be construed to mean the Lord Chancellor of Ireland :

[*The definitions of " the Summary Jurisdiction Act " and " court of summary jurisdiction " were repealed by the Statute Law Revision (No. 2) Act, 1893.*]

The court of summary jurisdiction, when hearing and determining complaints under this Act, shall in the police district of Dublin metropolis be constituted of one or more of the divisional justices of the said district, and elsewhere in Ireland of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions :

The expression " fifth section of the Debtors Act, 1869," shall be construed to mean " sixth section of Debtors Act (Ireland), 1872."

apprentices to the gen service from the Act was repealed by the Merchant Seamen (Payment of Wages and Rating) Act, 1880 (43 & 44 Vict. c. 16), s. 11.

EMPLOYERS AND WORKMEN ACT, 1875.

RULES.

1. These rules may be cited as the Employers and Workmen Rules, 1886, and shall come into operation on the first day of January, 1887.

2. The proceedings in relation to any dispute between an employer and a workman may be commenced under the Employers and Workmen Act, 1875, in a court of summary jurisdiction for the district in which the defendant or one of the defendants dwelt or carried on business, or was employed at the time the cause of action arose, or in which he or one of them happens to be at the time of the entry of the action, and thereupon the same proceedings shall be had, and the same forms may be used as upon a claim for a civil debt under the Summary Jurisdiction Acts: Provided that the summons shall be served four clear days at least before the hearing in manner directed by the said Summary Jurisdiction Acts, or by leaving it with an adult person at the office or place of business or employment of the defendant or one of the defendants: Provided also that no order of commitment shall be made against an apprentice until he shall have been personally served with a judgment summons.

3. A defendant shall not, except by leave of the court of summary jurisdiction, on such terms as the court may think fit, be permitted to set up against the claims of the plaintiff any set-off or counter-claim, unless he shall have served, or cause to be served, by registered post letter or otherwise, two clear days at least before the return day, a notice thereof directed to the plaintiff at his address as mentioned in the summons, setting forth the particulars of such set-off or counter-claim. Service of any notice by post shall, unless the contrary be proved, be deemed to have been made on the day upon which the letter would have been delivered in the ordinary course of post.

4. Where disputes between an employer and his workmen are of such a character that the liability of the employer to divers of his workmen depends upon circumstances common to a whole class of their claims, the names of all the workmen whose claims are grounded upon common circumstances may be inserted as plaintiffs in one summons. Where the number of such plaintiffs is large, the name of one plaintiff only may be inserted in the body of the summons, and in such case the names of the other plaintiffs, together with their descriptions and addresses and the amounts of their respective claims, may be indorsed on the summons or added in a schedule thereto annexed.

5. The employer may, at the hearing of any such summons, object that the claim of any plaintiff included in the summons ought to be separately heard and determined, either on the ground that the amount claimed is disputed, as well as the liability, or as depending on special circumstances. The name of any plaintiff, whose claim is so objected to, shall be struck out by order of the court of summary jurisdiction.

6. When the summons comes on for hearing, the case of the plaintiff first named in the summons shall (unless the Court otherwise directs) be heard and determined, and the claims of all the other plaintiffs whose names shall have been included in the summons, and not struck out as in Rule 5 provided, shall abide the result of the case so determined.

7. If the court of summary jurisdiction dismisses the summons, no claim shall afterwards be admitted at the instance of any workman whose name was included in the summons (and was not struck out as in Rule 5 provided) in respect of the claim made thereby, unless he shows to the satisfaction of the court that his name was included in the summons without his consent.

8. If the court of summary jurisdiction finds in favour of the plaintiff whose case is tried, it shall make an order on all the claims of the plaintiffs included in the summons (not struck out as in Rule 5 provided), and such order shall operate and take effect as if the claim of each workman,

Short title and commencement.
Procedure.

Set-off or counterclaim.

Names of plaintiffs claiming upon common circumstances to be inserted in one summons.

Defendant may object that a plaintiff's claim shall be heard separately.

Determination of first-named plaintiff's claim to determine the others.

Where summons dismissed.

Where claimants succeed.

whose name may have been so included as a plaintiff in the summons and not struck out, had been separately heard and determined by the court, and an order had been made on each such claim.

New trial. 9. The court of summary jurisdiction by whom any action has been determined *ex parte* may, at the same or any subsequent court, set aside any judgment so given, and any process thereon, and may grant a new trial on such terms as the court may think fit.

Fees. 10. The fees to be paid by a person seeking the assistance of the court of summary jurisdiction shall be those contained in the schedule annexed hereto.

Costs. 11. The court of summary jurisdiction may, in its discretion, allow any party, in respect of any expense he may have incurred in the employment of a solicitor, any sum not exceeding ten shillings where the sum claimed exceeds forty shillings, and not exceeding fifteen shillings where it exceeds five pounds.

Forms. 12. The forms in force under the Summary Jurisdiction Rules, 1886, so far as the same are applicable, together with the forms in the schedule hereto, and forms to the like effect, with such variations as circumstances may require, may be used in proceedings under this Act.

Annulment. 13. The rules and forms under the Employers and Workmen Act, 1875, heretofore in use are hereby annulled.

(Signed) HERSCHELL, C.

The 16th July, 1886.

SCHEDULE.

1.

ORDER RESCINDING CONTRACT.

In the [county of , Petty Sessional Division of].

Between A. B., Plaintiff,

and

C. D., Defendant.

Before the Court of Summary Jurisdiction sitting at .

It is adjudged that the [or this] contract [or instrument of apprenticeship] made between the plaintiff and defendant [on the day of

18] be rescinded, and that the plaintiff [or defendant] do pay to the sum of pounds, being the whole [or a part] for wages [or damages, or in respect of the premium paid on such instrument of apprenticeship].

Dated the day of one thousand eight hundred and .

J. P.,

Justice of the Peace for the [county] aforesaid. (Seal.)

2.

ORDER FOR PERFORMANCE OF CONTRACT.

In the [county of , Petty Sessional Division of].

Between A. B., Plaintiff,

and

C. D. and E. F., Defendant.

Before the Court of Summary Jurisdiction at .

It is ordered that the defendant [C. D.] do perform his contract [of apprenticeship] with the plaintiff, that is to say [setting out the particulars if necessary].

[And that he [or the defendant E. F.] do pay to the plaintiff the sum of for damages].

And the defendant, the said E. F. [or C. D.], being willing to give security for the performance of such contract, the Court hereby accepts his security in pounds, with suret in pounds [each] for

the performance of such contract as aforesaid [in place of the payment of [£ part of] such damages].

Dated the day of one thousand eight hundred and .

J. P.,

Justice of the Peace for the [*county*] aforesaid. (Seal.)

3.

UNDERTAKING BY DEFENDANT TO PERFORM CONTRACT.

In the [*county of* . *Petty Sessional Division of*].

Between *A. B.*, Plaintiff.

and

C. D., Defendant.

Whereas it having been found by the Court of Summary Jurisdiction, sitting at on the day of , that the defendant had broken the contract for the breach of which he was summoned, it is ordered that he should give security for the performance of his contract:

Now, therefore, I the defendant, and we [*or I*] his suret , do undertake that the said defendant will perform the said contract, that is to say [*setting out the particulars if necessary*]:

And we do hereby severally acknowledge ourselves bound to forfeit to the plaintiff the sum of pounds and shillings, in case the said defendant fails to perform what he has hereby undertaken to perform.

(Signed where not taken orally) *C. D.*, Defendant.
E. F., { Sureties.
G. H., }

Taken before me this day of .

J.P.,

Justice of the Peace for the [*county*] aforesaid. (Seal.)

FEES.

	<i>s.</i>	<i>d.</i>
For entry of every plaint, including summons thereon . . .	1	0
For order in writing on a plaint	2	0
For every undertaking given by way of security	2	0
For judgment summons, including hearing	1	0
For warrant of distress or order of commitment	2	0
For summons to witness	1	0

N.B.—Where the sum claimed exceeds 1*l.*, or the sum in respect of the non-payment of which the summons for or order of commitment or warrant of distress issues exceeds 1*l.*, an additional fee of one shilling on each fee shall be taken.

For mileage in serving or executing process, } Such reasonable cost as
 and for cost of conveying to prison . . . } may be allowed by
 For affidavit and postage } the Court.

THE TRADE UNION ACT AMENDMENT ACT, 1876.

39 & 40 VICT. c. 22.

An Act to amend the Trade Union Act, 1871.

[30th June, 1876.]

Be it enacted by, &c., &c., as follows:

1. This Act and the Trade Union Act, 1871 (*c.*), hereinafter termed the Construction principal Act, shall be construed as one Act, and may be cited together and short title.

Trade unions
to be within
sect. 28 of
Friendly
Societies Act,
1875.

Amendment
of sect. 8 of
principal Act.

Provision
in case of
absence, &c.
of trustee.

Jurisdiction
in offences.

Registry of
unions doing
business in
more than
one country.

Life Assurance
Companies
Acts not to
apply to
registered
unions.

Withdrawal
or cancelling
of certificate.

as the "Trade Union Acts, 1871 and 1876," and this Act may be cited separately as the "Trade Union Act Amendment Act, 1876."

2. Notwithstanding anything in section five of the principal Act contained, a trade union, whether registered or unregistered, which insures or pays money on the death of a child under ten years of age shall be deemed to be within the provisions of section twenty-eight of the Friendly Societies Act, 1875.

3. Whereas by section eight of the principal Act it is enacted that "the real or personal estate of any branch of a trade union shall be vested in the trustees of such branch:" the said section shall be read and construed as if immediately after the hereinbefore recited words there were inserted the words "or of the trustees of the trade union, if the rules of the trade union so provide."

4. When any person, being or having been a trustee of a trade union or of any branch of a trade union, and whether appointed before or after the legal establishment thereof, in whose name any stock belonging to such union or branch transferable at the Bank of England or Bank of Ireland is standing, either jointly with another or others, or solely, is absent from Great Britain or Ireland respectively, or becomes bankrupt, or files any petition, or executes any deed for liquidation of his affairs by assignment or arrangement, or for composition with his creditors, or becomes a lunatic, or is dead, or has been removed from his office of trustee, or if it be unknown whether such person is living or dead, the registrar, on application in writing from the secretary and three members of the union or branch, and on proof satisfactory to him, may direct the transfer of the stock into the names of any other persons as trustees for the union or branch; and such transfer shall be made by the surviving or continuing trustees, and if there be no such trustee, or if such trustees refuse or be unable to make such transfer, and the registrar so direct, then by the Accountant-General or Deputy or Assistant Accountant-General of the Bank of England or Bank of Ireland, as the case may be; and the Governors and Companies of the Bank of England and Bank of Ireland respectively are hereby indemnified for anything done by them or any of their officers in pursuance of this provision against any claim or demand of any person injuriously affected thereby.

5. The jurisdiction conferred in the case of certain offences by section twelve of the principal Act upon the court of summary jurisdiction for the place in which the registered office of a trade union is situate may be exercised either by that court or by the court of summary jurisdiction for the place where the offence has been committed.

6. Trade unions carrying or intending to carry on business in more than one country shall be registered in the country in which their registered office is situate; but copies of the rules of such unions, and of all amendments of the same, shall, when registered, be sent to the registrar of each of the other countries, to be recorded by him, and until such rules be so recorded the union shall not be entitled to any of the privileges of this Act or the principal Act, in the country in which such rules have not been recorded, and until such amendments of rules be recorded the same shall not take effect in such country.

In this section "country" means England, Scotland, or Ireland.

7. Whereas by the Life Assurance Companies Act, 1870, it is provided that the said Act shall not apply to societies registered under the Acts relating to friendly societies: the said Act (or the amending Acts) shall not apply nor be deemed to have applied to trade unions registered or to be registered under the principal Act.

8. No certificate of registration of a trade union shall be withdrawn or cancelled otherwise than by the chief registrar of friendly societies, or in the case of trade unions registered and doing business exclusively in Scotland or Ireland, by the assistant registrar for Scotland or Ireland, and in the following cases:

(1.) At the request of the trade union to be evidenced in such manner

as such chief or assistant registrar shall from time to time direct :

- (2.) On proof to his satisfaction that a certificate of registration has been obtained by fraud or mistake, or that the registration of the trade union has become void under section six of the Trade Union Act, 1871, or that such trade union has wilfully and after notice from a registrar whom it may concern, violated any of the provisions of the Trade Union Acts, or has ceased to exist.

Not less than two months previous notice in writing, specifying briefly the ground of any proposed withdrawal or cancelling of certificate (unless where the same is shown to have become void as aforesaid, in which case it shall be the duty of the chief or assistant registrar to cancel the same forthwith) shall be given by the chief or assistant registrar to a trade union before the certificate of registration of the same can be withdrawn or cancelled (except at its request).

A trade union whose certificate of registration has been withdrawn or cancelled shall, from the time of such withdrawal or cancelling, absolutely cease to enjoy as such the privileges of a registered trade union, but without prejudice to any liability actually incurred by such trade union, which may be enforced against the same as if such withdrawal or cancelling had not taken place.

9. A person under the age of twenty-one, but above the age of sixteen, may be a member of a trade union, unless provision be made in the rules thereof to the contrary, and may, subject to the rules of the trade union, enjoy all the rights of a member except as herein provided, and execute all instruments and give all acquittances necessary to be executed or given under the rules, but shall not be a member of the committee of management, trustee, or treasurer of the trade union. Membership of minors.

10. A member of a trade union not being under the age of sixteen years may, by writing under his hand, delivered at, or sent to the registered office of the trade union, nominate any person not being an officer or servant of the trade union (unless such officer or servant is the husband, wife, father, mother, child, brother, sister, nephew, or niece of the nominator) to whom any moneys payable on the death of such member not exceeding fifty pounds shall be paid at his decease, and may from time to time revoke or vary such nomination by a writing under his hand similarly delivered or sent ; and on receiving satisfactory proof of the death of a nominator, the trade union shall pay (*d*) to the nominee the amount due to the deceased member not exceeding the sum aforesaid. Nomination.

11. A trade union may, with the approval in writing of the chief registrar of friendly societies, or in the case of trade unions registered and doing business exclusively in Scotland or Ireland, of the assistant registrar for Scotland or Ireland respectively, change its name by the consent of not less than two thirds of the total number of members. Change of name.

No change of name shall affect any right or obligation of the trade union or of any member thereof, and any pending legal proceedings may be continued by or against the trustees of the trade union or any other officer who may sue or be sued on behalf of such trade union notwithstanding its new name.

12. Any two or more trade unions may, by the consent of not less than two thirds of the members of each or every such trade union, become amalgamated together as one trade union, with or without any dissolution or division of the funds of such trade unions, or either or any of them : but no amalgamation shall prejudice any right of a creditor of either or any union party thereto. Amalgamation.

(*d*) This section does not override sect. 4 of the Trade Union Act, 1871, *ante*, p. 546, and no action lies under it against a trade union by the nominee of a deceased member to recover money payable under the rules of the society at his death : *Crocker v. Knight*, (1892) 1 Q. B. 702.

Registration of changes of names and amalgamations.

13. Notice in writing of every change of name or amalgamation signed, in the case of a change of name, by seven members, and countersigned by the secretary of the trade union changing its name, and accompanied by a statutory declaration by such secretary that the provisions of this Act in respect of changes of name have been complied with, and in the case of an amalgamation signed by seven members, and countersigned by the secretary of each or every union party thereto, and accompanied by a statutory declaration by each or every such secretary that the provisions of this Act in respect of amalgamations have been complied with, shall be sent to the central office established by the Friendly Societies Act, 1875, and registered there, and until such change of name or amalgamation is so registered the same shall not take effect.

Dissolution.

14. The rules of every trade union shall provide for the manner of dissolving the same, and notice of every dissolution of a trade union under the hand of the secretary and seven members of the same, shall be sent within fourteen days thereafter to the central office hereinbefore mentioned, or, in the case of trade unions registered and doing business exclusively in Scotland or Ireland, to the assistant registrar for Scotland or Ireland respectively, and shall be registered by them: Provided, that the rules of any trade union registered before the passing of this Act shall not be invalidated by the absence of a provision for dissolution.

Penalty for failure to give notice.

15. A trade union which fails to give any notice or send any document which it is required by this Act to give or send, and every officer or other person bound by the rules thereof to give or send the same, or if there be no such officer, then every member of the committee of management of the union, unless proved to have been ignorant of, or to have attempted to prevent the omission to give or send the same, is liable to a penalty of not less than one pound and not more than five pounds, recoverable at the suit of the chief or any assistant registrar of friendly societies, or of any person aggrieved, and to an additional penalty of the like amount for each week during which the omission continues.

Definition of "trade union" altered.

16. So much of section twenty-three of the principal Act (c) as defines the term trade union, except the proviso qualifying such definition, is hereby repealed, and in lieu thereof be it enacted as follows:

The term "trade union" means (f) any combination whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, whether such combination would or would not, if the principal Act had not been passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade.

THE CHILDREN'S DANGEROUS PERFORMANCES ACT, 1879.

42 & 43 VICT. c. 34.

An Act to regulate the Employment of Children in places of public amusement in certain cases. [24th July, 1879.]

Whereas it is expedient to regulate the employment of children in places of public amusement in certain cases:

Be it therefore enacted by, &c., &c., as follows:

Short title.

1. This Act may be cited as the Children's Dangerous Performances Act, 1879.

(c) *Ante*, p. 552.

(f) *Mineral Water Bottle Exchange and Trade Protection Society v. Booth*, 36 Ch. D. 465; *Swaine v. Wilson*, 24 Q. B. D. 252; *Chamberlain's Wharf, Limited, v. Smith*, [1900] 2 Ch. 605.

[*Sect. 2 was repealed by the Statute Law Revision Act, 1894.*]

3. Any person who shall cause any child under the age of fourteen years to take part in any public exhibition or performance whereby, in the opinion of a court of summary jurisdiction, the life or limbs of such child shall be endangered, and the parent or guardian, or any person having the custody, of such child, who shall aid or abet the same, shall severally be guilty of an offence against this Act, and shall on summary conviction be liable for each offence to a penalty not exceeding ten pounds (*g*).

Penalty for employment of any child in dangerous performances.

And where in the course of a public exhibition or performance, which in its nature is dangerous to the life or limb of a child under such age as aforesaid taking part therein, any accident causing actual bodily harm occurs to any such child, the employer of such child shall be liable to be indicted as having committed an assault; and the court before whom such employer is convicted on indictment shall have the power of awarding compensation not exceeding twenty pounds, to be paid by such employer to the child, or to some person named by the court on behalf of the child, for the bodily harm so occasioned; provided that no person shall be punished twice for the same offence.

Compensation for accident to any child.

4. Whenever any person is charged (*h*) with an offence against this Act in respect of a child who in the opinion of the court trying the case is apparently of the age alleged by the informant, it shall lie on the person charged to prove that the child is not of that age.

Evidence of age.

5. Every offence against this Act in respect of which the person committing it is liable as above mentioned to a penalty not exceeding ten pounds shall be prosecuted and the penalty recovered with costs in a summary manner, as follows:

Recovery of penalties.

In England, in accordance with the provisions of the Act eleventh and twelfth Victoria, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and of any Act or Acts amending the same (*i*); and the court of summary jurisdiction when hearing and determining an information in respect of any offence under this Act shall be constituted either of two or more justices of the peace in petty sessions, sitting at a place appointed for the holding of petty sessions, or some magistrate or officer sitting alone or with others at some court or other place appointed for the administration of justice for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace:

In Scotland, in accordance with the provisions of the Summary Procedure Act, 1864, and of any Act or Acts amending the same; and

27 & 28 Vict. c. 53.

In Ireland, within the police district of Dublin metropolis in accordance with the provisions of the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district, and elsewhere in Ireland in accordance with the provisions of the Petty Sessions (Ireland) Act, 1851, and any Act amending or affecting the same.

14 & 15 Vict. c. 93.

(*g*) See the amendments introduced by the Dangerous Performances Act, 1897, *post*, p. 723.

(*h*) As to the arrest of an offender, the mode of proceeding against him and the jurisdiction of the court, see the Prevention of Cruelty to Children Act, 1894, ss. 4 to 20, *post*, p. 643.

(*i*) See the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49).

THE EMPLOYERS' LIABILITY ACT, 1880.

43 & 44 VICT. c. 42.

An Act to extend and regulate the Liability of Employers to make Compensation for Personal Injuries suffered by Workmen in their service. [7th September, 1880.]

Be it enacted by, &c., &c., as follows :

Amendment
of law.

1. Where after the commencement of this Act personal injury is caused to a workman (*j*).

(1.) By reason (*k*) of any defect in the condition of the ways (*l*), works (*m*), machinery (*n*), or plant connected with or used (*o*) in the business of the employer (*p*) : or

(*j*) See sect. 8.

(*k*) See sect. 2 (1).

(*l*) Neither habitual user nor metes and bounds are necessary in order to constitute a "way" : *Willetts v. Watt*, (1892) 2 Q. B. 92. The expression "defect in the condition" implies something of a more or less permanent or chronic nature, and has been held not to include a case of negligent user such as the negligent placing of an obstruction upon the way : *McGiffin v. Palmer's Shipbuilding Co.*, 10 Q. B. D. 5; or the throwing of rubbish down a lift well : *Papam v. Bacon*, 55 L. J., Q. B. 447; or the temporary removal of the lid of a catchpit : *Willetts v. Watt*, 1892 2 Q. B. 92. See the remarks on this last case in *Tate v. Latham*, (1897) 1 Q. B. 502.

(*m*) A factory wall in course of erection would not be part of the works used in the business of the factory owner : *Howe v. Finch*, 17 Q. B. D. 187; but a wall being demolished by a builder for the purpose of clearing a site for a new building would be part of the works connected with or used in the builder's business : *Brannigan v. Robinson*, 1892 1 Q. B. 344. See the remarks of Lord Watson in *Smith v. Baker*, (1891) A. C. 325, as to a defect in works arising out of machinery or tackle causing a danger recurring at intervals, which may be cured by giving workmen timely notice of the approach of the danger.

(*n*) Machinery or plant is defective within this section if it is unfit for the purpose for which it is intended to be used, showing negligence on the part of the employer : *Walsh v. Whiteley*, 21 Q. B. D. 371. There was held to be such evidence of a defect in *Heske v. Samuelsen*, 12 Q. B. D. 30, where the sides of a lift were not fenced so as to prevent the coke carried on it from falling off on to persons below; in *Cripps v. Judge*, 13 Q. B. D. 583, where a plasterers' scaffolding gave way; in *Paley v. Garnett*, 16 Q. B. D. 52, where a roller used in a paper mill, instead of being in one piece, was made in eight sections with interstices between, in which a workman's fingers were caught; in *Weiden v. Ballard*, 17 Q. B. D. 122, where a ladder which had to be leant against a crooked pipe had no hooks or anything to steady it so that it fell; in *Yarworth v. France*, 19 Q. B. D. 647, where an extraordinarily vicious horse was used by a wharfinger in London for drawing a trolley; in *Tate v. Latham*, (1897) 1 Q. B. 502, where a movable guard to a circular saw was improperly removed by the Sawyer. See also *Stanton v. Scutcheon*, 62 L. J., Q. B. 405. As to statutory provisions for fencing machinery, see sect. 10 of the Factory and Workshop Act, 1901, *post*, p. 729. A coal ship unsupplied with ventilators as required by the regulations of the Board of Trade was held to be defective plant of a coal contractor when lying in a harbour and about to be unloaded by him : *Carter v. Clarke*, 78 L. T. Rep. 76. In *Walsh v. Whiteley*, 21 Q. B. D. 371, the majority of the Court of Appeal held that it was not evidence of a defect in a machine that a wheel which might have been

(*o*) (*p*) For notes see next page.

- (2.) By reason of the negligence of any person in the service of the employer who has any superintendence entrusted (*g*) to him whilst in the exercise of such superintendence : or
- (3.) By reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, where such injury resulted from his having so conformed (*r*) : or
- (4.) By reason (*s*) of the act or omission of any person in the service of the employer done or made in obedience to the rules or byelaws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf : or
- (5.) By reason of the negligence of any person in the service of the employer who has the charge or control (*t*) of any

made of solid metal was in fact made with holes in it, for the sake of lightness : the plaintiff while working at it having caught his fingers in the holes of the wheel. In *Smith v. Baker*, (1891) A. C. 325, Lord Watson said that he saw no reason to doubt that an arrangement of machinery and tackle which, although reasonably safe for those engaged in working it, is nevertheless dangerous to workmen employed in another department of the business, constitutes a defect in the condition of the works within the meaning of the sub-section.

(*e*) In *Thompson v. City Glass Bottle Co.*, (1902) 1 K. B. 233, the County Court Judge held that a machine which had ceased to be used in the employer's business and was being removed from its place in the workshop was plant connected with or used in the business of the employer. The Court of Appeal, reversing the decision of the King's Bench Division, held that there was evidence to justify his finding.

(*p*) As to the meaning of "employer," see sect. 8.

(*q*) See the definition in sect. 8. It has been held that a man whose duty it was to guide a crane by means of a guy rope, and to give directions when to lower and when to hoist was not within this definition : *Shaffers v. General Steam Navigation Co.*, 10 Q. B. D. 356 ; nor a foreman of a gang of labourers : *Kellard v. Rooke*, 19 Q. B. D. 585 ; 21 Q. B. D. 367. But a person having superintendence is not necessarily outside the definition merely because he voluntarily assisted in manual labour : *Osborne v. Jackson*, 11 Q. B. D. 619.

(*r*) This sub-section is not to be limited to an injury arising from an order which order is negligent in itself, nor is it essential to show that the conformity to the order was the *causa causans* of the injury : see the judgment of Lord Herschell in *Wild v. Waygood*, (1892) 1 Q. B. 783. The person giving the orders must have authority to tell the workman where he was to work and at what time : *Snowden v. Baynes*, 25 Q. B. D. 193. The order by which the injury was caused may be express or implied : *Kellard v. Rooke*, 21 Q. B. D. 367. In *Millward v. Midland Railway Co.*, 14 Q. B. D. 68, where a van boy was injured by conforming to the orders of a carman, it was held that there was evidence to go to the jury under this sub-section.

(*s*) See sect. 2 (2).

(*t*) In *Cor v. Great Western Railway Co.*, 9 Q. B. D. 106, it was held that there was evidence to show that a capstan-man who propelled a series of trucks along a line of rails in a goods station was in charge or control of a train on a railway. In *Gibbs v. Great Western Railway Co.*, 12 Q. B. D. 208, it was held that there was no evidence to show that a workman employed to clean, oil, and adjust points on a railway was in charge or control of them. In *McCord v. Cannell*, (1896) A. C. 57, it was held that a person who has the charge or control of a train does not necessarily cease to have charge of it, within this sub-section, because some of the carriages have been uncoupled so that they may be separately dealt with ; and it was also held that the words of the sub-section do not necessarily point to only one person being in charge of the train, but may include persons having duties to perform in respect of parts of the train.

signal, points, locomotive engine(*n*), or train upon a railway(*r*),

the workman, or in case the injury results in death, the legal personal representatives of the workman, and any persons entitled in case of death shall have the same right of compensation(*n*) and remedies against the employer as if (*x*) the workman had not been a workman of nor in the service of the employer, nor engaged in his work.

Exceptions to
amendment
of law.

2. A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases; that is to say,

- (1.) Under sub-section one of section one, unless the defect therein mentioned arose from or had not been discovered or remedied owing to the negligence(*y*) of the employer, or of some person in the service of the employer, and entrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition.
- (2.) Under sub-section four of section one, unless the injury resulted from some impropriety or defect in the rules, byelaws, or instructions therein mentioned; provided that where a rule or byelaw has been approved or has been accepted as a proper rule or byelaw by one of her Majesty's Principal Secretaries of State or by the Board of Trade or any other department of the Government, under or by virtue of any Act of Parliament, it shall not be deemed for the purposes of this Act to be an improper or defective rule or byelaw.
- (3.) In any case(*z*) where the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer or some person superior to himself in the service of the employer, unless he was aware that the employer or such superior already knew of the said defect or negligence.

(*a*) This does not include a steam crane on rails: *Murphy v. Wilson*, 52 L. J., Q. B. 524.

(*c*) This includes a temporary tramway used by a contractor: *Doughty v. Firbank*, 10 Q. B. D. 358.

(*w*) It is competent for a workman to agree as part of his contract of service that neither he, nor his personal representatives in case of his death, shall have any claim against his employer for compensation under this Act: *Griffiths v. Earl of Dudley*, 9 Q. B. D. 357. Such an agreement made by an infant workman may be for his benefit and therefore binding upon him: *Clements v. London and North Western Railway Co.*, (1894) 2 Q. B. 482.

(*x*) The defence of common employment is thus taken away from the employer. Bowen, L. J., in a written judgment, said that in his opinion the Act, with certain exceptions, has placed the workman in a position as advantageous as, but no better than, that of the rest of the world who use the master's premises at his invitation on business: *Thomas v. Quartermaine*, 18 Q. B. D. 685. The defence of contributory negligence and the defence resting on the doctrine *volenti non fit injuria* are both open to the master in a claim under this Act. Neither mere knowledge of the risk, nor continuing to work with knowledge of the risk, necessarily precludes a workman from recovering compensation: *Webley v. Ballard*, 17 Q. B. D. 122; *Thomas v. Quartermaine*, *ubi supra*; *Yarmouth v. France*, 19 Q. B. D. 647; *Baddeley v. Earl Granville*, 19 Q. B. D. 423; *Smith v. Baker*, (1891) A. C. 325. See sect. 2 (3).

(*y*) *Muore v. Gimson*, 58 L. J., Q. B. 169; *Kiddle v. Lovett*, 16 Q. B. D. 605.

(*z*) This sub-section gives the employer a new statutory defence: *Webley v. Ballard*, 17 Q. B. D. 122; as to which case see the judgment of Bowen, L. J., in *Thomas v. Quartermaine*, 18 Q. B. D. 685, 699.

3. The amount of compensation recoverable under this Act shall not exceed such sum as may be found to be equivalent to the estimated earnings (*a*), during the three years preceding the injury, of a person in the same grade employed during those years in the like employment and in the district in which the workman is employed at the time of the injury.

Limit of sum recoverable as compensation.

4. An action for the recovery under this Act of compensation for an injury shall not be maintainable unless notice (*b*) that injury has been sustained is given within six weeks, and the action is commenced within six months from the occurrence of the accident causing the injury, or, in case of death, within twelve months from the time of death: Provided always, that in case of death the want of such notice shall be no bar to the maintenance of such action if the judge shall be of opinion that there was reasonable excuse for such want of notice.

Limit of time for recovery of compensation.

5. There shall be deducted from any compensation awarded to any workman, or representatives of a workman, or persons claiming by, under, or through a workman in respect of any cause of action arising under this Act, any penalty or part of a penalty which may have been paid in pursuance of any other Act of Parliament to such workman, representatives, or persons in respect of the same cause of action; and where an action has been brought under this Act by any workman, or the representatives of any workman, or any persons claiming by, under, or through such workman, for compensation in respect of any cause of action arising under this Act, and payment has not previously been made of any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action, such workman, representatives or person shall not be entitled thereafter to receive any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action.

Money payable under penalty to be deducted from compensation under Act.

6.—(1.) Every action for recovery of compensation under this Act shall be brought in a county court (*c*), but may, upon the application of either plaintiff or defendant, be removed into a superior court in like manner and upon the same conditions as an action commenced in a county court may by law be removed (*d*).

Trial of actions.

Removal of actions.

(2.) Upon the trial of any such action in a county court before the judge without a jury one or more assessors may be appointed for the purpose of ascertaining the amount of compensation.

Appointment of assessors.

(3.) For the purpose of regulating the conditions and mode of appointment and remuneration of such assessors, and all matters of procedure relating to their duties, and also for the purpose of consolidating any actions under this Act in a county court, and otherwise preventing multiplicity of such actions, rules and regulations may be made, varied, and repealed from time to time in the same manner as rules and regulations for regulating the practice and procedure in other actions in county courts (*e*).

County court rules.

(*a*) In the case of an apprentice, "earnings" would include other things besides money supplied to him by his employer, such as food or clothing, which can be estimated at a money value: *Noel v. Redruth Foundry Co.*, (1896) 1 Q. B. 453.

(*b*) See sect. 7. A defence that no notice has been given within six weeks of the occurrence of the accident is a statutory offence of which the defendant must give notice under the County Court Rules, 1889, Order X.: *Conroy v. Peacock*, (1897) 2 Q. B. 6.

(*c*) There is no right of appeal from the decision of a county court upon an action under this Act except upon a point of law which has been raised and submitted to the County Court judge at the trial: *Smith v. Baker*, (1891) A. C. 325.

(*d*) *Munday v. Thames Ironworks Co.*, 10 Q. B. D. 59; *R. v. Judge of the City of London Court*, 14 Q. B. D. 905.

(*e*) See the County Court Rules, and especially Order XLIV.

Scotland and
Ireland.

"County court" shall, with respect to Scotland, mean the "Sheriff's Court," and shall, with respect to Ireland, mean the "Civil Bill Court." In Scotland any action under this Act may be removed to the Court of Session at the instance of either party, in the manner provided by, and subject to the conditions prescribed by, section nine of the Sheriff Courts (Scotland) Act, 1877.

In Scotland the sheriff may conjoin actions arising out of the same occurrence or cause of action, though at the instance of different parties and in respect of different injuries.

Mode of
serving notice
of injury.

7. Notice (*f*) in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

The notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business; and, if served by post, shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post; and, in proving the service of such notice, it shall be sufficient to prove that the notice was properly addressed and registered.

Where the employer is a body of persons corporate or unincorporate the notice shall be served by delivering the same at or by sending it by post in a registered letter addressed to the office, or, if there be more than one office, any one of the offices of such body.

A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein, unless the judge who tries the action arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy, and that the defect or inaccuracy was for the purpose of misleading.

Definitions.

8. For the purposes of this Act, unless the context otherwise requires,—
The expression "person who has superintendence entrusted to him" means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour:

The expression "employer" includes a body of persons corporate or unincorporate:

The expression "workman" means a railway servant and any person to whom the Employers and Workmen Act, 1875 (*g*), applies.

[*Sect. 9 was repealed by the Statute Law Revision Act, 1894.*]

Short title.

10. This Act may be cited as the Employers' Liability Act, 1880, and shall continue in force till the 31st day of December, 1887 (*h*), and to the end of the then next session of Parliament, and no longer, unless Parliament shall otherwise determine, and all actions commenced under this Act before that period shall be continued as if the said Act had not expired.

(*f*) See sect. 4. The notice must be in writing: *Moyle v. Jenkins*, 8 Q. B. D. 116; but *quære* whether it must be contained in one document or whether a document incorporating another by reference would be sufficient: *Keen v. Millwall Dock Co.*, 8 Q. B. D. 482. Though under this section the name and address of the person injured and the cause and date of the injury should be given in the notice, yet the omission to give any one of these things is only a "defect or inaccuracy" under the last paragraph of the section: *Stone v. Hyde*, 9 Q. B. D. 76; *Clarkson v. Musgrave*, 9 Q. B. D. 386; *Carter v. Drysdale*, 12 Q. B. D. 91; *Prevadi v. Gatti*, 58 L. T. Rep. 762.

(*g*) 38 & 39 Vict. c. 90, sect. 10, *ante*, p. 580.

(*h*) Continued yearly since, and by the Expiring Laws Continuance Act, 1901, to continue till December 31st, 1902.

THE SLATE MINES (GUNPOWDER) ACT, 1882.

45 VICT. c. 3.

An Act to amend the Law relating to the use of Gunpowder in Slate Mines. [29th March, 1882.]

Be it enacted by, &c., &c., as follows :

1. This Act may be cited as the Slate Mines (Gunpowder) Act, 1882.

2.—(1.) It shall be lawful for one of her Majesty's Principal Secretaries of State, if he shall think fit, from time to time, on the application of the owner, agent, or manager of any slate mine, to exempt such mine from the general rule contained in sub-section two of section twenty-three of the Metalliferous Mines Regulation Act, 1872 (*i*) with respect to the use of gunpowder or other explosive substances, or any portion of such rule.

(2.) The application shall be transmitted by the owner, agent, or manager to the inspector of the district, and the requirements of sections twenty-four and twenty-eight of the Metalliferous Mines Regulation Act, 1872 (*j*), as to the posting of any proposed special rule shall extend to any such application : Provided that the exemption shall not come into force until granted by the Secretary of State.

(3.) The Secretary of State may at any time revoke such exemption, but such revocation shall not come into force until written or printed notice thereof has been posted up at the mine for twenty-four hours.

(4.) A list of the exemptions granted or revoked under this Act shall be set forth by the inspector of the district in his annual report.

Title of Act.

Power to exempt slate mines from certain regulations relating to the use of explosives.

35 & 36 Vict. c. 77.

THE PAYMENT OF WAGES IN PUBLIC-HOUSES PROHIBITION ACT, 1883.

46 & 47 VICT. c. 31.

An Act to prohibit the Payment of Wages to Workmen in Public-houses and certain other places.

[20th August, 1883.]

[The preamble was repealed by the Statute Law Revision Act, 1898.]

Be it enacted by, &c., &c., as follows :

1. This Act may be cited as the Payment of Wages in Public-houses Prohibition Act, 1883.

2. In this Act the expression "workman" means (*k*) any person who is a labourer, servant in husbandry, journeyman, artificer, handicraftsman, or is otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, but does not include a domestic or menial servant, nor any person employed in or about any mine to which the Coal Mines Regulation Act, 1872 (*l*), or the Metalliferous Mines Regulation Act, 1872 (*m*), applies.

3. No wages shall be paid to any workman at or within any public-house, beershop, or place for the sale of any spirits, wine, cyder, or other

Short title.

Definition of workman.

No wages to be paid within public-house.

(*i*) *Ante*, p. 562.

(*j*) *Ante*, pp. 564, 565.

(*k*) See the definition of "workman" in sect. 10 of the Employers and Workmen Act, 1875, *ante*, p. 580.

(*l*) Coal Mines Regulation Act, 1887, sects. 75 and 83, *post*, pp. 630, 632.

(*m*) *Ante*, p. 554.

spirituous or fermented liquor, or any office, garden, or place belonging thereto or occupied therewith, save and except such wages as are paid by the resident owner or occupier of such public-house, beershop, or place to any workman *bonâ fide* employed by him.

Every person who contravenes or fails to comply with or permits any person to contravene or fail to comply with this Act shall be guilty of an offence against this Act.

And in the event of any wages being paid by any person in contravention of the provisions of this Act for or on behalf of any employer, such employer shall himself be guilty of an offence against this Act, unless he prove that he had taken all reasonable means in his power for enforcing the provisions of this Act and to prevent such contravention.

Penalties.

4. Every person who is guilty of an offence against this Act shall be liable to a penalty not exceeding ten pounds for each offence; and all offences against this Act may be prosecuted and all penalties under this Act may be recovered by any person summarily in England in the manner provided by the Summary Jurisdiction Acts, and in Scotland in the manner provided by the Summary Jurisdiction (Scotland) Acts, 1864 and 1881.

Act not to
apply to
Ireland

5. This Act shall not apply to Ireland.

THE TRUCK AMENDMENT ACT, 1887.

50 & 51 Vict. c. 46.

An Act to amend and extend the Law relating to Truck.

[16th September, 1887.]

Be it enacted, &c., as follows :

Short title.

1 & 2 Will. 4,
c. 37.

1. This Act may be cited as the Truck Amendment Act, 1887. The Act of the session of the first and second years of the reign of King William the Fourth, chapter thirty-seven, intituled "An Act to prohibit the payment in certain trades of wages in goods or otherwise than in the current coin of the realm" (in this Act referred to as the principal Act), may be cited as the Truck Act, 1831, and that Act and this Act may be cited together as the Truck Acts, 1831 and 1887, and shall be construed together as one Act (*n*).

Application
of principal
Act to work-
man as de-
fined by
38 & 39 Vict.
c. 90.

2. The provisions of the principal Act shall extend to, apply to, and include any workman as defined in the Employers and Workmen Act, 1875, section ten, and the expression "artificer" in the principal Act shall be construed to include every workman to whom the principal Act is extended and applied by this Act, and all provisions and enactments in the principal Act inconsistent herewith are hereby repealed.

Advance of
wages.

3. Whenever by agreement, custom, or otherwise a workman is entitled to receive in anticipation of the regular period of the payment of his wages an advance as part or on account thereof, it shall not be lawful for the employer to withhold such advance or make any deduction in respect of such advance on account of poundage, discount, or interest, or any similar charge.

Saving for
servant in
husbandry.

4. Nothing in the principal Act or this Act shall render illegal a contract with a servant in husbandry for giving him food, drink, not being intoxicating, a cottage, or other allowances or privileges in addition to money wages as a remuneration for his services.

Order for
goods as a
deduction
from wages
illegal.

5. In any action brought by a workman for the recovery of his wages, the employer shall not be entitled to any set off or counterclaim (*n*) in

(*n*) These two Acts are also to be construed together as one Act with the Truck Act, 1896, *post*, p. 657.

(*o*) Compare sect. 5 of the Truck Act, 1831, *ante*, p. 523.

respect of any goods supplied to the workman by any person under any order or direction of the employer, or any agent of the employer, and the employer of a workman or any agent of the employer, or any person supplying goods to the workman under any order or direction of such employer or agent, shall not be entitled to sue the workman for or in respect of any goods supplied by such employer or agent, or under such order or direction, as the case may be.

Provided that nothing in this section shall apply to anything excepted by section twenty-three of the principal Act.

6. No employer shall (*p*), directly or indirectly, by himself or his agent, impose as a condition, express or implied, in or for the employment of any workman any terms as to the place at which, or the manner in which, or the person with whom, any wages or portion of wages paid to the workman are or is to be expended, and no employer shall by himself or his agent dismiss any workman from his employment for or on account of the place at which, or the manner in which, or the person with whom, any wages or portion of wages paid by the employer to such workman are or is expended or fail to be expended.

No contracts with workman as to spending wages at any particular shop, &c.

7. Where any deduction is made by an employer from a workman's wages for education, such workman on sending his child to any state-inspected school selected by the workman shall be entitled to have the school fees of his child at that school paid by the employer at the same rate and to the same extent as the other workmen from whose wages the like deduction is made by such employer.

Deduction for education.

In this section "state-inspected school" means any elementary school inspected under the direction of the Education Department in England or Scotland or of the Board of National Education in Ireland.

8. No deduction shall be made from a workman's wages for sharpening or repairing tools, except by agreement not forming part of the condition of hiring.

Deduction for sharpening tools, &c.

9. Where deductions are made from the wages of any workmen for the education of children or in respect of medicine, medical attendance, or tools, once at least in every year the employer shall, by himself or his agent, make out a correct account of the receipts and expenditure in respect of such deductions, and submit the same to be audited by two auditors appointed by the said workmen, and shall produce to the auditors all such books, vouchers, and documents, and afford them all such other facilities as are required for such audit.

Audit of deductions.

10. Where articles are made by a person at his own home, or otherwise, without the employment of any person under him except a member of his own family, the principal Act and this Act shall apply as if he were a workman, and the shopkeeper, dealer, trader, or other person buying the articles in the way of trade were his employer, and the provisions of this Act with respect to the payment of wages shall apply as if the price of an article were wages earned during the seven days next preceding the date at which any article is received from the workman by the employer.

Artificer to be paid in cash and not by way of barter for articles made by him.

This section shall apply only to articles under the value of five pounds knitted or otherwise manufactured of wool, worsted, yarn, stuff, jersey, linen, fustian, cloth, serge, cotton, leather, fur, hemp, flax, mohair, or silk, or of any combination thereof, or made or prepared of bone, thread, silk, or cotton lace, or of lace made of any mixed materials. Where it is made to appear to her Majesty the Queen in Council that, in the interests of persons making articles to which this section applies in any county or place in the United Kingdom, it is expedient so to do, it shall be lawful for her Majesty, by Order in Council, to suspend the operation of this section in such county or place, and the same shall accordingly be

(*p*) This section does not apply to written contracts excepted by sect. 23 of the Truck Act, 1831, from the operation of that Act: *Lamb v. Great Northern Railway Co.*, (1891) 2 Q. B. 281.

suspended, either wholly or in part, and either with or without any limitations or exceptions, according as is provided by the Order.

Offences.

11. If any employer or his agent contravenes or fails to comply with any of the foregoing provisions of this Act, such employer or agent, as the case may be, shall be guilty of an offence against the principal Act, and shall be liable to the penalties imposed by section nine of that Act as if the offence were such an offence as in that section mentioned.

Fine on person committing offence for which employer is liable, and power of employer to exempt himself from penalty on conviction of actual offender.

12.—(1.) Where an offence for which an employer is, by virtue of the principal Act or this Act, liable to a penalty has in fact been committed by some agent of the employer or other person, such agent or other person shall be liable to the same penalty as if he were the employer.

(2.) Where an employer is charged with an offence against the principal Act or this Act he shall be entitled, upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved the employer proves to the satisfaction of the court that he had used due diligence to enforce the execution of the said Acts, and that the said other person had committed the offence in question without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the employer shall be exempt from any penalty.

When it is made to appear to the satisfaction of an inspector of factories or mines, or in Scotland a procurator fiscal, at the time of discovering the offence, that the employer had used due diligence to enforce the execution of the said Acts, and also by what person such offence had been committed, and also that it had been committed without the knowledge, consent, or connivance of the employer, then the inspector or procurator fiscal shall proceed against the person whom he believes to be the actual offender in the first instance without first proceeding against the employer.

Recovery of penalties.

13.—(1.) Any offence against the principal Act or this Act may be prosecuted, and any penalty therefor recovered in manner provided by the Summary Jurisdiction Acts, so, however, that no penalty shall be imposed on summary conviction exceeding that prescribed by the principal Act for a second offence.

(2.) It shall be the duty of the inspectors of factories and the inspectors of mines to enforce the provisions of the principal Act and this Act within their districts so far as respects factories, workshops, and mines inspected by them respectively, and such inspectors shall for this purpose have the same powers and authorities as they respectively have for the purpose of enforcing the provisions of any Acts relating to factories, workshops, or mines, and all expenses incurred by them under this section shall be defrayed out of moneys provided by Parliament (*g*).

(3.) In England all penalties recovered under the principal Act and this Act shall be paid into the receipt of her Majesty's Exchequer, and be carried to the Consolidated Fund.

(4.) In Scotland—

(a) The procurators fiscal of the sheriff court shall, as part of their official duty, investigate and prosecute offences against the principal Act or this Act, and such prosecution may also be instituted in the sheriff court at the instance of any inspector of factories or inspector of mines;

(b) All offences against the said Acts shall be prosecuted in the sheriff court.

Definitions.

14. In this Act, unless the context otherwise requires,—

The expression "Summary Jurisdiction Acts" means, as respects England, the Summary Jurisdiction Acts as defined by the Summary Jurisdiction Act, 1879; and, as respects Scotland, means the

(*g*) Extended to laundries by sect. 10 of the Truck Act, 1896, *post*, p. 660.

Summary Jurisdiction (Scotland) Acts, 1864 and 1881, and any Acts amending the same :

Other expressions have the same meaning as in the principal Act.

15. So much of the principal Act as disqualifies any justice from acting as such under the principal Act is hereby repealed. Disqualification of justice.

A person engaged in the same trade or occupation as an employer charged with an offence against the principal Act or this Act shall not act as a justice of the peace in hearing and determining such charge.

16. The provisions of the principal Act conferring powers on any overseers or overseer of the poor shall be deemed to confer those powers in the case of England on the guardians of a union, and in the case of Scotland on the inspectors of the poor. Amendment of 1 & 2 Will. 4, c. 37, as to overseers.

17. The Acts mentioned in the schedule to this Act are hereby repealed to the extent in the third column of the said schedule mentioned, without prejudice to anything heretofore done or suffered in respect thereof. Repeal.

18. The principal Act, so far as it is not hereby repealed, and this Act shall extend to Ireland, subject to the following provisions : Application of Acts to Ireland.

(1.) Any offence against the principal Act or this Act may be prosecuted and any penalty therefor may be recovered in the manner provided by the Summary Jurisdiction (Ireland) Acts ; (that is to say,) within the Dublin Metropolitan Police District the Acts regulating the powers and duties of justices of the peace and of the police of that district, and elsewhere in Ireland the Petty Sessions (Ireland) Act, 1851, and the Acts amending the same ;

(2.) Penalties recovered under the principal Act or this Act shall be applied in the manner directed by the Fines (Ireland) Act, 1851, and the Acts amending the same.

SCHEDULE.

Session and Chapter.	Title of Act.	Extent of Repeal
12 Geo. 1, c. 34. .	An Act to prevent unlawful combinations of workmen employed in the woollen manufactures, and for better payment of their wages.	Section three, and so much of section eight as applies to section three.
22 Geo. 2, c. 27. .	An Act, the title of which begins with "An Act for the more effectual preventing of frauds," and ends with the words "and for the better payment of their wages."	So much of section twelve as applies to any enactment repealed by this Act.
30 Geo. 2, c. 12. .	An Act, the title of which begins with the words "An Act to amend an Act," and ends with the words "payment of the workmen's wages in any other manner than in money."	Sections two and three.
57 Geo. 3, c. 115. .	An Act, the title of which begins with the words "An Act to extend the provisions of an Act," and ends with the words "articles of cutlery."	The whole Act.

SCHEDULE—continued.

Session and Chapter.	Title of Act.	Extent of Repeal.
57 Geo. 3, c. 122 .	An Act, the title of which begins with the words "An Act to extend the provisions," and ends with the words "extending the provisions of the said Acts to Scotland and Ireland."	The whole Act.
1 & 2 Will. 4, c. 37 .	An Act to prohibit the payment in certain trades of wages in goods or otherwise than in the current coin of the realm.	Section ten, down to "be produced to the court and jury" inclusive; section eleven, section twelve, section fifteen, section sixteen, section eighteen, section nineteen, in section twenty the words "or servant in husbandry;" section twenty-one, section twenty-two, section twenty-four from "and unless the agreement" inclusive to end of section, and section twenty-five from "all workmen" to "purposes aforesaid" both inclusive, and the schedules.

THE COAL MINES REGULATION ACT, 1887.

50 & 51 Vict. c. 58.

An Act to consolidate with amendments the Coal Mines Acts, 1872 and 1886, and the Stratified Ironstone Mines (Gunpowder) Act, 1881. [16th September, 1887.]

Whereas it is expedient to repeal and re-enact with amendments the Coal Mines Acts, 1872 and 1886, and the Stratified Ironstone Mines (Gunpowder) Act, 1881:

Be it therefore enacted, &c., as follows:

Preliminary.

1. This Act may be cited as the Coal Mines Regulation Act, 1887.

2. This Act shall not come into operation until the first day of January, one thousand eight hundred and eighty-eight, which date is in this Act referred to as the commencement of this Act.

3. This Act shall apply to mines of coal, mines of stratified ironstone, mines of shale, and mines of fire-clay; and in this Act, unless the context otherwise requires, the word "mine" means a mine to which this Act applies.

35 & 36 Vict.
c. 76.

49 & 50 Vict.
c. 40.

44 & 45 Vict.
c. 26.

Short title.

Commence-
ment of Act.

Application
of Act.

PART I.

Employment of Boys, Girls, and Women.

4. No boy under the age of [thirteen (*r*)] years, and no girl or woman of any age, shall be employed in or allowed to be for the purpose of employment in any mine below ground.

5. A boy (*s*) of or above the age of [thirteen] years shall not be employed in or allowed to be for the purpose of employment in any mine below ground for more than fifty-four hours in any one week, nor more than ten hours in any one day, nor otherwise than in accordance with the regulations hereinafter contained with respect to the employment of boys in a mine below ground.

6. With respect to the employment of boys in a mine below ground, the following regulations shall have effect; that is to say,

(1.) There shall be allowed an interval of not less than eight hours between the period of employment on Friday and the period of employment on the following Saturday, and in other cases of not less than twelve hours between each period of employment:

(2.) The period of each employment shall be deemed to begin at the time of leaving the surface, and to end at the time of returning to the surface:

(3.) A week shall be deemed to begin at midnight on Saturday night and to end at midnight on the succeeding Saturday night.

7. With respect to boys, girls, and women employed above ground, in connexion with any mine, the following provisions shall have effect:

(1.) No boy or girl under the age of twelve years shall be so employed:

(2.) No boy or girl under the age of thirteen years shall be so employed—

(a) for more than six days in any one week; or

(b) if employed for more than three days in any one week, for more than six hours in any one day; or

(c) in any other case for more than ten hours in any one day:

(3.) No boy or girl of or above the age of thirteen years and no woman shall be so employed for more than fifty-four hours in any one week or more than ten hours in any one day:

(4.) No boy, girl, or woman shall be so employed between the hours of nine at night and five on the following morning, nor on Sunday, nor after two o'clock on Saturday afternoon:

(5.) There shall be allowed an interval of not less than eight hours between the termination of employment on Friday and the commencement of employment on the following Saturday, and in other cases of not less than twelve hours between the termination of employment on one day, and the commencement of the next employment:

(6.) A week shall be deemed to begin at midnight on Saturday night and to end at midnight on the succeeding Saturday night:

(7.) No boy, girl, or woman shall be employed continuously for more than five hours, without an interval of at least half an hour for a meal, nor for more than eight hours on any one day, without an interval or intervals for meals amounting altogether to not less than one hour and a half:

(8.) No boy, girl, or woman shall be employed in moving railway waggons.

The provisions of this section as to the employment of boys, girls, and women after two o'clock on Saturday afternoon, shall not apply in the

Employment below ground of boys under twelve and of girls and women prohibited.

Hours of employment of boys over twelve below ground.

Regulations as to employment of boys below ground.

Employment of boys, girls, and women above ground.

(*r*) Mines (Prohibition of Child Labour Underground) Act, 1900, *post*, p. 725.

(*s*) Under the age of sixteen: sect. 75.

Register to be kept of boys, girls, and women employed.

Penalty for employment of persons in contravention of Act.

Payment of school fees out of wages.

Prohibition of payment of wages at public-houses, &c.

Payment of persons employed in mines by weight.

case of any mine in Ireland, so long as it is exempted by order of a Secretary of State.

8.—(1.) The owner agent or manager of every mine shall keep in the office at the mine a register, and shall cause to be entered in that register, in such form as the Secretary of State may from time to time prescribe or sanction, the name, age, residence, and date of first employment of all boys employed in the mine below ground, and of all boys, girls, and women employed above ground in connexion with the mine; and shall on request, produce the register to any inspector under this Act, and to any officer of a school board or school attendance committee in the district in which the mine is situate, at the mine at all reasonable times, and shall allow any such inspector or officer to inspect and copy the same.

(2.) The immediate employer of every boy, other than the owner agent or manager of the mine, before he causes the boy to be below ground in any mine, shall report to the manager of the mine or to some person appointed by that manager, that he is about to employ the boy in the mine.

9. If any person contravenes or fails to comply with, or permits any person to contravene or fail to comply with, any provision of this Act with respect to the employment of boys, girls, or women, or to the register of boys girls and women, or to reporting the intended employment of boys, he shall be guilty of an offence against this Act; and in the event of any such contravention or non-compliance by any person whomsoever, the owner agent and manager of the mine shall each be guilty of an offence against this Act, unless he proves that he had taken all reasonable means, by publishing and to the best of his power enforcing the provisions of this Act, to prevent the contravention or non-compliance (*t*).

10.—(1.) After a request in writing by the principal teacher of a public elementary school which is attended by any boy or girl employed in or in connexion with a mine, the person who pays the wages of the boy or girl shall as long as he employs the boy or girl pay to the principal teacher of that school, for every week that the boy or girl attends the school, the weekly sum specified in the application, not exceeding two-pence per week, and not exceeding one-twelfth part of the wages of the boy or girl, and may deduct the sum so paid by him from the wages payable for the services of the boy or girl.

(2.) If any person after such application refuses to pay on demand any sum that becomes due as aforesaid, he shall be liable to a penalty not exceeding ten shillings.

Wages.

11.—(1.) No wages shall be paid to any person employed in or about any mine at or within any public-house, beer-shop, or place for the sale of any spirits beer wine cyder or other spirituous or fermented liquor, or other house of entertainment, or any office garden or place belonging or contiguous thereto, or occupied therewith.

(2.) Every person who contravenes or fails to comply with or permits any person to contravene or fail to comply with this section shall be guilty of an offence against this Act; and in the event of any such contravention or non-compliance by any person whomsoever, the owner agent and manager of the mine shall each be guilty of an offence against this Act, unless he proves that he had taken all reasonable means by publishing and to the best of his power enforcing the provisions of this section to prevent the contravention or non-compliance.

12.—(1.) Where the amount of wages paid to any of the persons employed in a mine depends on the amount of mineral gotten by them (*u*),

(*t*) *Hall v. Hapwood*, 49 L. J., M. C. 17.

(*u*) On the construction of this section, see *Netherseal Colliery Co. v. Barrac*, 14 A. C. 228; *Brace v. Abercrom Colliery Co.*, [1891] 2 Q. B. 699;

those persons shall be paid according to the actual weight gotten by them of the mineral contracted to be gotten, and the mineral gotten by them shall be truly weighed at a place as near to the pit mouth as is reasonably practicable.

Provided that nothing in this section shall preclude the owner agent or manager of the mine from agreeing with the persons employed in the mine that deductions shall be made in respect of stones or substances other than the mineral contracted to be gotten, which shall be sent out of the mine with the mineral contracted to be gotten, or in respect of any tubs baskets or hutches being improperly filled in those cases where they are filled by the getter of the mineral or his drawer, or by the person immediately employed by him; such deductions being determined in such special mode as may be agreed upon between the owner agent or manager of the mine on the one hand, and the persons employed in the mine on the other, or by some person appointed in that behalf by the owner agent or manager, or (if any check weigher is stationed for this purpose as hereinafter mentioned), by such person and such check weigher, or in case of difference by a third person to be mutually agreed on by the owner agent or manager of the mine on the one hand, and the persons employed in the mine on the other, or in default of agreement appointed by a chairman of a court of quarter sessions within the jurisdiction of which any shaft of the mine is situate.

(2.) If any person contravenes or fails to comply with, or permits any person to contravene or fail to comply with, this section, he shall be guilty of an offence against this Act; and in the event of any such contravention or non-compliance by any person whomsoever, the owner agent and manager of the mine shall each be guilty of an offence against this Act, unless he proves that he had taken all reasonable means by publishing and to the best of his power enforcing the provisions of this section to prevent the contravention or non-compliance.

(3.) Where it is proved to the satisfaction of a Secretary of State, in the case of any mine or class of mines employing not more than thirty persons underground, to be expedient that the persons employed therein should, upon the joint representation of the owner or owners of any such mine or class of mines and the said persons, be paid by any method other than that provided by this Act, such Secretary of State may, if he think fit, by order allow the same either without conditions or during the time and on the conditions specified in the order.

13.—(1.) The persons (*r*) who are employed in a mine, and are paid according to the weight of the mineral gotten by them, may, at their own cost, station a person (in this Act referred to as "a check weigher") at each place appointed for the weighing of the mineral, and at each place appointed for determining the deductions in order that he may on behalf of the persons by whom he is so stationed take a correct account of the weight of the mineral or determine correctly the deductions as the case may be.

(2.) A check weigher shall have every facility afforded to him for enabling him to fulfil the duties for which he is stationed, including facilities for examining and testing the weighing machine, and checking the taring of tubs and trams where necessary; and if at any mine proper facilities are not afforded to a check weigher as required by this section, the owner agent and manager of the mine shall each be guilty of an offence against this Act, unless he proves that he had taken all

Appointment
on part of
men, and
removal, of
check weigher.

Kearney v. Whitehaven Colliery Co., (1893) 1 Q. B. 700; *Humble v. Humphreys*, 85 L. T. Rep. 563.

(*r*) See *Whitehead v. Holdsworth*, 4 Ex. D. 13; and *Hopkinson v. Cant*, 14 Q. B. D. 592; decisions under previous Acts. Interference by the owner, &c., with the appointment of the check weigher is forbidden by the Coal Mines (Checkweigher) Act, 1894, *post*, p. 653.

reasonable means to enforce to the best of his power the requirements of this section.

(3.) A check weigher shall not be authorised in any way to impede or interrupt the working of the mine, or to interfere with the weighing, or with any of the workmen or with the management of the mine: but shall be authorised only to take such account or determine such deductions as aforesaid, and the absence of a check weigher from the place at which he is stationed shall not be a reason for interrupting or delaying the weighing or the determination of deductions at such place respectively, but the same shall be done or made by the person appointed in that behalf by the owner agent or manager, unless the absent check weigher had reasonable ground to suppose that the weighing or the determination of the deductions, as the case may be, would not be proceeded with: Provided always, that nothing in this section shall prevent a check weigher giving to any workman an account of the mineral gotten by him, or information with respect to the weighing, or the weighing machine, or the taring of the tubs or trams, or with respect to the deductions or any other matter within the scope of his duties as check weigher, so always, nevertheless, that the working of the mine be not interrupted or impeded.

(4.) If the owner agent or manager of the mine desires the removal of a check weigher on the ground that the check weigher has impeded or interrupted the working of the mine, or interfered with the weighing, or with any of the workmen, or with the management of the mine, or has at the mine to the detriment of the owner agent or manager done anything beyond taking such account determining such deductions or giving such information as aforesaid, he may complain to a court of summary jurisdiction, who, if of opinion that the owner agent or manager shows sufficient *prima facie* ground for the removal of the check weigher, shall call on the check weigher to show cause against his removal.

(5.) On the hearing of the case the court shall hear the parties, and, if they think that at the hearing sufficient ground is shown by the owner agent or manager to justify the removal of the check weigher, shall make a summary order for his removal, and the check weigher shall thereupon be removed, but without prejudice to the stationing of another check weigher in his place.

(6.) The court may in every case make such order as to the costs of the proceedings as the court may think just.

(7.) If in pursuance of any order of exemption made by a Secretary of State, the persons employed in a mine are paid by the measure or gauge of the material gotten by them, the provisions of this Act shall apply in like manner as if the term "weighing" included measuring and gauging, and the terms relating to weighing shall be construed accordingly.

(8.) If the person appointed by the owner, agent, or manager to weigh the mineral impedes or interrupts the check weigher in the proper discharge of his duties, or improperly interferes with or alters the weighing machine or the tare in order to prevent a correct account being taken of the weighing and taring, he shall be guilty of an offence against this Act.

Remuneration
of check
weigher.

14—(1.) Where a check weigher has been appointed by the majority, ascertained by ballot, of the persons employed in a mine who are paid according to the weight of the mineral gotten by them, and has acted as such, he may recover from any person for the time being employed at such mine and so paid, his proportion of the check weigher's wages or recompense, notwithstanding that any of the persons by whom the check weigher was appointed may have left the mine or others have entered the same since the check weigher's appointment, any rule of law or equity to the contrary notwithstanding.

(2.) It shall be lawful for the owner or manager of any mine, where the majority of the before-mentioned persons, ascertained as aforesaid, so

agree, to retain the agreed contribution of the persons so employed and paid as aforesaid for the check weigher, notwithstanding the provisions of the Acts relating to truck, and to pay and account for the same to the check weigher.

15.—(1.) The Weights and Measures Act, 1878, shall apply to all weights, balances, scales, steelyards, and weighing machines used at any mine for determining the wages payable to any person employed in the mine according to the weight of the mineral gotten by him, in like manner as it applies to weights, balances, scales, steelyards, and weighing machines used for trade. Application of
41 & 42 Vict.
c. 49 to
weights, &c.
used in mines.

(2.) An inspector of weights and measures appointed under the said Act shall once at least in every six months inspect and examine in manner directed by the said Act the weights, balances, scales, steelyards, and weighing machines used or in the possession of any person for use as aforesaid at any mine within his district; and shall also make such inspection and examination at any other time in any case where he has reasonable cause to believe that there is in use at the mine any false or unjust weight, balance, scale, steelyard, or weighing machine.

(3.) The inspector shall also inspect and examine the measures and gauges in use at the mines within his district: but nothing in this section shall prevent or interfere with the use of the measures or gauges ordinarily used at the mine.

(4.) An inspector may, for the purposes of this section, without any authorisation from a justice of the peace, exercise at or in any mine, as respects all weights, measures, scales, balances, steelyards, and weighing machines used or in possession of any person for use at or in that mine, all such powers as he could exercise, if authorised in writing by a justice of the peace, under section forty-eight of the Weights and Measures Act, 1878, with respect to any such weights, measures, scales, balances, steelyards, and weighing machines as therein mentioned: and all the provisions of that section, including the liability to penalties, shall apply to such inspection.

(5.) The inspector of weights and measures shall not, in fulfilling the duties required of him under this section, impede or obstruct the working of the mine.

Single Shafts.

16.—(1.) After the commencement of this Act the owner agent or manager of a mine shall not employ any person in the mine, or permit any person to be in the mine for the purpose of employment therein, unless the following conditions respecting shafts or outlets are complied with, that is to say,— Prohibition of
single shafts.

- (a) There must be at least two shafts or outlets, with which every seam for the time being at work in the mine shall have a communication, so that such shafts or outlets shall afford separate means of ingress and egress available to the persons employed in every such seam, whether the shafts or outlets belong to the same mine or to more than one mine:
- (b) Such shafts or outlets must not at any point be nearer to one another than fifteen yards; and there shall be between such two shafts or outlets a communication not less than four feet wide and three feet high, and in the case of communications made after the commencement of this Act between shafts or outlets, not less than four feet high.
- (c) Proper apparatus for raising and lowering persons at each such shaft or outlet shall be kept on the works belonging to the mine; and such apparatus if not in actual use at the shafts or outlets, shall be constantly available for use.

(2.) Every owner agent and manager of a mine who acts in contravention of or fails to comply with this section shall be guilty of an offence against this Act.

(3.) Any of her Majesty's superior courts, whether any other proceedings have or have not been taken, may, on the application of the Attorney-General, prohibit by injunction the working of any mine in which any person is employed, or is permitted to be for the purpose of employment, in contravention of this section, and may award such costs in the matter of the injunction as the court thinks just: but this provision shall be without prejudice to any other remedy permitted by law for enforcing the provisions of this Act.

(4.) Written notice of the intention to apply for such injunction in respect of any mine shall be given to the owner agent or manager of the mine not less than ten days before the application is made.

Agreements
not to preclude
compliance
with Act.

17. No person shall be precluded by any agreement from doing such acts as may be necessary for providing a second shaft or outlet to a mine, where the same is required by this Act, or be liable under any contract to any penalty or forfeiture for doing such acts as may be necessary in order to comply with the provisions of this Act with respect to shafts or outlets.

Exceptions
from provisions
as to shafts.

18. The foregoing provisions of this Act with respect to shafts or outlets shall not apply—

(i.) In the case of a new mine being opened—

(a) to any working for the purpose of making a communication between two or more shafts; or

(b) to any working for the purpose of searching for or proving minerals;

so long as not more than twenty persons are employed below ground at any one time in the whole of the different seams in connexion with a single shaft or outlet: nor

(ii.) To any proved mine so long as it is exempted by order of a Secretary of State on the ground either—

(a) that the quantity of mineral proved is not sufficient to repay the outlay which would be occasioned by sinking or making a second shaft or outlet, or by establishing communication with a second shaft or outlet, in any case where such communication existed and has become unavailable; or

(b) that the workings in any seam of the mine have reached the boundary of the property or the extremity of the mineral field of which that seam is a part, and that it is expedient to work away the pillars already formed in the course of the ordinary working, notwithstanding that one of the shafts or outlets may be cut off by so working away the pillars of that seam:

and so long as not more than twenty persons are employed below ground at any one time in the whole of the different seams in connexion with a single shaft or outlet; nor

(iii.) To any mine—

(a) while a shaft is being sunk, or an outlet being made; or

(b) one of the shafts or outlets of which has become, by reason of some accident, unavailable for the use of the persons employed in the mine;

so long as the mine is exempted by order of a Secretary of State, and as the conditions (if any) annexed to the order of exemption are duly observed. The provision in this Act requiring the two shafts or outlets of a mine to be separated by a distance of not less than fifteen yards shall not apply to any mine which is provided with two shafts sunk before the first day of January one thousand eight hundred and sixty-five but at that time separated by a distance of less than ten feet, or commenced to be sunk before the commencement of this Act but separated by a distance of more than ten feet and less than fifteen yards.

The foregoing provisions of this Act as to the dimensions of the

communication between two shafts or outlets shall not apply to any mine or class of mines so long as the same is exempted therefrom by order of a Secretary of State by reason of the thinness of the seams or other exigencies affecting that mine or class of mines, and so long as the conditions (if any) annexed to the order of exemption are duly observed.

Division of Mine into Parts.

19.—(1.) Where two or more parts of a mine are worked separately, the owner agent or manager of the mine may give notice in writing to that effect to the inspector of the district, and thereupon each such part shall, for all the purposes of this Act, be deemed to be a separate mine. Division of mine into parts.

(2.) If a Secretary of State is of opinion that the division of a mine in pursuance of this section tends to lead to evasion of the provisions of this Act, or otherwise to prevent the carrying of this Act into effect, he may object to the division by notice served on the owner agent or manager of the mine; and the owner agent or manager, if he declines to acquiesce in such objection, may, within twenty days after receipt of the notice, send a notice to the inspector of the district stating that he declines so to acquiesce, and thereupon the matter shall be determined by arbitration in manner provided by this Act; and the date of the receipt of the last mentioned notice shall be deemed to be the date of the reference.

Certificated Managers.

20.—(1.) Every mine shall be under a manager (*w*), who shall be responsible for the control, management, and direction of the mine, and the owner or agent of every such mine shall nominate himself or some other person to be the manager of such mine, and shall send written notice to the inspector of the district of the manager's name and address. Appointment of manager of mine.

(2.) A person shall not be qualified to be a manager of a mine unless he is for the time being registered as the holder of a first class certificate under this Act.

(3.) If any mine is worked for more than fourteen days without there being such a manager for the mine as is required by this section, the owner and agent of the mine shall each be liable to a fine not exceeding fifty pounds, and to a further fine not exceeding ten pounds for every day during which the mine is so worked.

Provided that—

- (a) The owner of the mine shall not be liable to any such fine if he proves that he had taken all reasonable means by the enforcement of this section to prevent the mine being worked in contravention of this section;
- (b) If for any reasonable cause there is for the time being no manager of a mine qualified as required by this section, the owner or agent of the mine may appoint any competent person not holding a certificate under this Act to be manager, for a period not exceeding two months or such longer period as may elapse before such person has an opportunity in the district wherein the mine is situate of obtaining by examination a certificate under this Act, and shall send to the inspector of the district a written notice of the manager's name and address, and of the reason for his appointment: and
- (c) A mine in which not more than thirty persons are employed below ground shall be exempt from the provisions of this section, unless the inspector of the district, by notice in writing served on the owner or agent of the mine, requires that it be under the control of a manager.

(*w*) See *Howells v. Landore Siemens Co.*, L. R., 10 Q. B. 62, a decision under a previous Act.

Daily supervision of mine by manager or under manager.

21.—(1.) In every mine required by this Act to be under the control of a certificated manager, daily personal supervision shall be exercised either by the manager, or by an under manager nominated in writing by the owner or agent of the mine.

(2.) Every person so nominated must hold either a first class or second class certificate under this Act, and shall, in the absence of the manager, have the same responsibility, and be subject to the same liabilities as the manager under this Act, but the nomination of an under manager shall not affect the personal responsibility of the manager under this Act.

Disqualifications for post of manager or under manager.

22. A contractor for mineral, or person employed by such a contractor, is not eligible for the post of manager or under manager under this Act.

Constitution of board for appointing examiners for granting certificates of competency to managers and under managers.

23.—(1.) There shall be two descriptions of certificates of competency under this Act, (i.) first class certificates, that is to say, certificates of fitness to be manager; and (ii.) second class certificates, that is to say, certificates of fitness to be under manager; but no person shall be entitled to a certificate under this Act unless he shall have had practical experience in a mine for at least five years.

(2.) For the purpose of granting in any part of the United Kingdom, to be from time to time defined by an order of a Secretary of State, certificates of competency for the purposes of this Act, examiners shall be appointed by a board consisting of—

(a) Three persons being owners of mines in the said part of the United Kingdom; and

(b) Three persons employed or who have been employed in or about any mine in the said part of the United Kingdom, not being owners agents or managers of a mine; and

(c) Three persons practising as mining engineers agents or managers of mines, or coal viewers in the said part of the United Kingdom; and

(d) One inspector under this Act.

(3.) The members of the board shall be appointed and may be removed by a Secretary of State, and shall hold office during his pleasure.

Proceedings and powers of board for appointing examiners.

24.—(1.) The proceedings of each board shall be in accordance with the rules contained in schedule one to this Act.

(2.) Each board shall from time to time appoint examiners, not being members of the board, except with the consent of the Secretary of State, to conduct the examinations in the part of the United Kingdom for which the board acts, of applicants for certificates of competency under this Act, and may from time to time make alter and revoke rules as to the conduct of such examinations and the qualifications of the applicants, so, however, that in every such examination regard shall be had to such knowledge as is necessary for the practical working of mines in that part of the United Kingdom, and that the examination and qualifications of applicants for second class certificates shall be suitable for practical working miners.

(3.) Each board shall make from time to time to a Secretary of State a report of their proceedings, and of such other matters as a Secretary of State may from time to time require.

Rules by Secretary of State as to examinations.

25. A Secretary of State may from time to time make alter and revoke rules as to the places and times of examinations of applicants for certificates of competency under this Act, the number and remuneration of the examiners, and the fees to be paid by the applicants, so that the fees do not exceed those specified in schedule two to this Act. Every such rule shall be observed by every board appointed under this Act to which it applies.

Grant of certificates to applicants on passing examination.

26.—(1.) A Secretary of State shall deliver to every applicant who is duly reported by the examiners to have passed the examination satisfactorily, and to have given satisfactory evidence of his sobriety experience ability and general good conduct, such a certificate of competency

as the case requires. The certificate shall be in such form as a Secretary of State from time to time directs.

(2.) A register of the holders of such certificates shall be kept by such person and in such manner as a Secretary of State from time to time directs.

27. If at any time representation is made to a Secretary of State by an inspector or otherwise, that any manager or under-manager holding a certificate under this Act is by reason of incompetency or gross negligence unfit to discharge his duties, or has been convicted of an offence against this Act, the Secretary of State may, if he think fit, cause inquiry to be made into the conduct of the manager or under-manager, and with respect to every such inquiry the following provisions shall have effect:

Inquiry into competency of manager, and cancellation of certificate in case of unfitness.

- (1.) The inquiry shall be public, and shall be held at such place as the Secretary of State may appoint by such county court judge, metropolitan police magistrate, stipendiary magistrate, or other person or persons, as may be directed by the Secretary of State, and either alone or with the assistance of any assessor or assessors named by the Secretary of State:
- (2.) The Secretary of State shall, before the commencement of the inquiry, furnish to the manager or under-manager a statement of the case on which the inquiry is instituted:
- (3.) Some person appointed by the Secretary of State shall undertake the management of the case:
- (4.) The manager or under-manager may attend the inquiry by himself, his counsel, solicitor, or agent, and may, if he thinks fit, be sworn and examined as an ordinary witness in the case:
- (5.) The person or persons appointed to hold the inquiry, in this Act referred to as the court, shall, on the conclusion of the inquiry, send to the Secretary of State a report containing a full statement of the case, and the opinion of the court thereon, and such report of, or extracts from the evidence, as the court may think fit:
- (6.) The court shall have power to cancel or suspend the certificate of the manager or under-manager, if it finds that he is by reason of incompetency or gross negligence, or of his having been convicted of an offence against this Act, unfit to discharge his duty:
- (7.) The court may, if it thinks fit, require a manager or under-manager to deliver up his certificate, and if any manager or under-manager fails, without sufficient cause to the satisfaction of the court, to comply with such requisition, he shall be liable to a fine not exceeding one hundred pounds. The court shall hold a certificate so delivered until the conclusion of the investigation, and shall then either restore cancel or suspend the certificate according to its judgment on the case:
- (8.) The court shall have for the purpose of the inquiry, all the powers of a court of summary jurisdiction, and all the powers of an inspector under this Act:
- (9.) The court may also, by summons signed by the court, require the attendance of all such persons as it thinks fit to summon and examine for the purpose of the inquiry; and every person so summoned shall be allowed such expenses as would be allowed to a witness attending on subpoena before a court of record: and in case of dispute as to the amount to be allowed, the same shall be referred by the court to a master of one of her Majesty's superior courts, who, on request signed by the court, shall ascertain and certify the proper amount of such expenses.

28.—(1.) The court may make such order as it thinks fit respecting the costs and expenses of the inquiry, and such order shall, on the application of any party entitled to the benefit thereof, be enforced by any court of

Costs and expenses of inquiry.

summary jurisdiction as if such costs and expenses were a fine imposed by that court.

(2.) The Secretary of State may, if he thinks fit, pay to the person or persons constituting the court, including any assessors, such remuneration as he may with the consent of the Treasury appoint.

(3.) Any costs and expenses ordered by the court to be paid by a Secretary of State, and any remuneration paid under this section, shall be paid out of moneys provided by Parliament.

Record of
cancellation of
certificate,
restoration in
certain cases.

29.—(1.) Where a certificate of a manager or under-manager is cancelled or suspended in pursuance of this Act, a Secretary of State shall cause the cancellation or suspension to be recorded in the register of holders of certificates.

(2.) A Secretary of State may at any time, if it is shown to him to be just so to do, renew or restore, on such terms as he thinks fit, any certificate which has been cancelled or suspended in pursuance of this Act, and cause the renewal or restoration to be recorded in the register aforesaid.

Copy of cer-
tificate in case
of loss.

30. Whenever any person proves to the satisfaction of a Secretary of State that he has, without fault on his part, lost or been deprived of any certificate granted to him under this Act, the Secretary of State shall, on payment of such fee, if any, as he may direct, but not exceeding the fee specified in schedule two to this Act, cause a copy of the certificate to which the applicant appears by the register to be entitled, to be made out and certified by the person who keeps the register, and delivered to the applicant; and any copy which purports to be so made and certified as aforesaid shall have all the effect of the original certificate.

Expenses in
relation to cer-
tificates, and
application of
fees.

31.—(1.) All expenses incurred by a Secretary of State with the concurrence of the Treasury in carrying into effect the provisions of this Act with respect to certificates of competency shall be defrayed out of moneys provided by Parliament.

(2.) All fees payable by the applicants for examination for or for a copy of a certificate under this Act shall be paid into the receipt of her Majesty's Exchequer in such manner as the Treasury may from time to time direct, and be carried to the Consolidated Fund.

Penalty for
forgery of, or
false declara-
tion as to,
certificate.

32. Every person who commits any of the following offences; that is to say,

(1.) Forges, or counterfeits, or knowingly makes any false statement in any certificate of competency under this Act, or in any certificate of service granted under this Act or any Act repealed by this Act, or any official copy of any such certificate; or

(2.) Knowingly utters or uses any such certificate or copy which has been forged or counterfeited or contains any false statement; or

(3.) For the purpose of obtaining, for himself or any other person, employment as a certificated manager or under-manager, or the grant renewal or restoration of any certificate under this Act, or a copy thereof, either

(a) makes or gives any declaration representation statement or evidence which is false in any particular, or

(b) knowingly utters, produces, or makes use of any such declaration representation statement or evidence, or any document containing the same,

shall be guilty of a misdemeanour, and be liable on conviction to imprisonment for a term not exceeding two years, with or without hard labour.

Returns, Plan, Notices, and Abandonment.

Returns by
owner agent or
manager of
mine.

33.—(1.) On or before the twenty-first day of January in every year the owner agent or manager of every mine shall send to the inspector of the district on behalf of a Secretary of State a correct return, specifying, with respect to the year ending on the preceding thirty-first day of December, the particulars contained in the form in schedule three to this Act, or in such other form as may from time to time be prescribed in lieu

of that form by a Secretary of State: Provided that in the case of any mine which is not required by this Act to be under the control of a certificated manager, a return shall not be required of the particulars contained in Part B. of the said form unless or until a Secretary of State otherwise prescribes.

(2.) Forms for the purpose of the returns required by this section shall from time to time, on application, be furnished by the inspector of the district on behalf of the Secretary of State.

(3.) The Secretary of State may publish the aggregate results of the returns made under this section with respect to any particular county or inspector's district, or any large portion of a county or inspector's district, and so much of any individual return as does not relate to the quantity of mineral gotten or wrought, but the portion of any individual return relating to the quantity of mineral gotten or wrought shall not be published without the consent of the person making the return, or of the owner of the mine to which it relates; and no person except an inspector or Secretary of State or any body of commissioners incorporated by Act of Parliament for the drainage of mines, and authorised to assess and levy rates in respect of minerals gotten from such mines, shall be entitled, without such consent, to see such portion as aforesaid of any individual return.

(4.) Every owner agent or manager of a mine who fails to comply with this section or makes any return which is to his knowledge false in any particular shall be guilty of an offence against this Act.

34.—(1.) The owner agent or manager of every mine shall keep in the office at the mine an accurate plan (*x*) of the workings of the mine, showing the workings up to a date not more than three months previously, and the general direction and rate of dip of the strata, together with a section of the strata sunk through, or if that be not reasonably practicable, a statement of the depth of the shaft, with a section of the seam.

Plan of mine
to be kept
at office.

(2.) The owner agent or manager of the mine shall, on request at any time of an inspector under this Act, produce to him at the office at the mine such plan and section, and shall also on the like request mark on such plan and section the then state of the workings of the mine; and the inspector shall be entitled to examine the plan and section, and for official purposes only to make a copy of any part thereof respectively.

(3.) If the owner agent or manager of any mine fails to keep, or wilfully refuses to produce or allow to be examined, the plan and section aforesaid, or wilfully withholds any portion thereof, or wilfully refuses, on request, to mark thereon the state of the workings of the mine, or conceals any part of those workings, or produces an imperfect or inaccurate plan or section, he shall (unless he shows that he was ignorant of the concealment imperfection or inaccuracy) be guilty of an offence against this Act; and further, the inspector may by notice in writing (whether a penalty for the offence has or has not been inflicted) require the owner agent or manager to cause an accurate plan and section, showing the particulars herein-before required, to be made within a reasonable time at the expense of the owner of the mine. Every such plan must be on a scale of not less than that of the Ordnance Survey of twenty-five inches to the mile or on the same scale as the plan for the time being in use at the mine.

(4.) If the owner agent or manager fails within twenty days after the requisition of the inspector, or within such further time as may be allowed by a Secretary of State, to cause such plan and section to be made as hereby required, he shall be guilty of an offence against this Act.

35.—(1.) Where in or about any mine, whether above or below ground,

Notice to be
given of
accidents in
mines.

either—

(i.) loss of life or any personal injury whatever to any person employed

(*x*) See sect. 3 of the Coal Mines Regulation Act, 1896, *post*, p. 656.

in or about the mine occurs by reason of any explosion of gas, or of any explosive, or of any steam boiler; or

(ii.) loss of life or any serious personal injury to any person employed in or about the mine occurs by reason of any accident whatever, the owner agent or manager of the mine shall, within twenty-four hours next after the explosion or accident, send notice in writing of the explosion or accident and of the loss of life or personal injury occasioned thereby to the inspector of the district on behalf of a Secretary of State, and shall specify in the notice the character of the explosion or accident and the number of persons killed or injured respectively.

(2.) Where loss of life or serious personal injury has immediately resulted from an explosion or accident, the place where the explosion or accident occurred shall be left as it was immediately after the explosion or accident, until the expiration of at least three days after the sending of such notice as aforesaid of such explosion or accident, or until the visit of the place by an inspector, whichever first happens, unless compliance with this enactment would tend to increase or continue a danger or would impede the working of the mine.

(3.) Where any personal injury, of which notice is required to be sent under this section, results in the death of the person injured, notice in writing of the death shall be sent to the inspector of the district on behalf of a Secretary of State within twenty-four hours after such death comes to the knowledge of the owner agent or manager.

(4.) Every owner agent or manager who fails to act in compliance with this section shall be guilty of an offence against this Act.

36. In any of the following cases, namely,

(i.) Where any working is commenced for the purpose of opening a new shaft for or a seam of any mine;

(ii.) Where a shaft or seam of any mine is abandoned or the working thereof discontinued;

(iii.) Where the working of a shaft or a seam of any mine is recommenced after any abandonment or discontinuance for a period exceeding two months; or

(iv.) Where any change occurs in the name of any mine or in the name of the owner agent or manager of any mine to which this Act applies, or in the principal officers of any incorporated company which is the owner of a mine;

the owner agent or manager of the mine shall give notice thereof to the inspector of the district within two months after the commencement abandonment discontinuance recommencement or change, and if such notice is not given the owner agent or manager shall be guilty of an offence against this Act.

37.—(1.) Where any mine is abandoned or the working thereof discontinued, at whatever time the abandonment or discontinuance occurred, the owner thereof, and every other person interested in the minerals of the mine, shall cause the top of every shaft and every side entrance from the surface to be and to be kept securely fenced (y) for the prevention of accidents:

Provided that—

(i.) Subject to any contract to the contrary, the owner of the mine shall, as between himself and any other person interested in the minerals of the mine, be liable to carry into effect this section, and to pay any costs charges and expenses incurred by any other person interested in the minerals of the mine in carrying this section into effect;

(ii.) Nothing in this section shall exempt any person from any liability under any other Act, or otherwise.

(2.) If any person fails to act in conformity with this section, he shall be guilty of an offence against this Act.

Notice to be given of opening and abandonment of mine.

Fencing in case of abandoned mine.

(y) See sect. 13 of the Metalliferous Mines Act, 1872, *ante*, p. 557.

(3.) No person shall be precluded by any agreement from doing, or be liable under any contract to any damages penalty or forfeiture for doing such acts as may be necessary in order to comply with the provisions of this section.

(4.) If any occupier of land or other person wilfully obstructs the owner of a mine or other person interested as aforesaid in doing any such acts, he shall be guilty of an offence against this Act.

(5.) Any shaft or side entrance which is not fenced as required by this section, and is within fifty yards of any highway, road, footpath, or place of public resort, or is in open or uninclosed land, shall be deemed to be a nuisance within the meaning of section ninety-one of the Public Health Act, 1875.

38 & 39 Vict.
c. 55.

38 (z).—(3.) The owner aforesaid shall also, within three months of the abandonment of the mine or seam, send to the inspector of the district, on behalf of a Secretary of State, a correct return specifying, with respect to the period which has elapsed since the expiration of the year covered by the last annual return made under this Act, the particulars required in that return; and the provisions of this Act with respect to the said annual return shall apply to the return so sent.

(4.) If the owner of a mine or seam fails to comply with this section, he shall be guilty of an offence against this Act, and be liable to a fine not exceeding thirty pounds.

(5.) A complaint or information of an offence under this section may be made or laid at any time within six months after abandonment of the mine or seam, or after service on the owner aforesaid of a notice to comply with the requirements of this section whichever last happens.

Inspection.

39.—(1.) A Secretary of State may from time to time appoint any fit persons to be inspectors (under whatever title he may from time to time fix) of mines, and assign them their duties, and may award them such salaries as the Treasury may approve, and may remove any such inspector: Provided always, that in the appointment of inspectors of mines in Wales and Monmouthshire among candidates, otherwise equally qualified, persons having a knowledge of the Welsh language shall be preferred.

Appointment
of inspectors
of mines.

(2.) Notice of the appointment of every such inspector shall be published in the London Gazette.

(3.) Every such inspector is referred to in this Act as an inspector, and the inspector of a district means the inspector who is for the time being assigned to the district or portion of the United Kingdom with reference to which the term is used.

(4.) Any person appointed or acting as inspector under the Metaliferous Mines Regulation Act, 1872, if directed by a Secretary of State to act as an inspector under this Act, may so act, and shall be deemed to be an inspector under this Act.

35 & 36 Vict.
c. 77.

(5.) The salaries of the inspectors and the expenses incurred by them or by a Secretary of State in the execution of this Act shall continue to be paid out of moneys to be provided by Parliament.

40. Any person who practises or acts as or is a partner of any person who practises or acts as a land agent or mining engineer, or as a manager viewer agent or valuer of mines, or arbitrator in any difference arising between owners agents or managers of mines, or is otherwise employed in or about any mine, or is a miner's agent or a mine owner (whether the mine is one to which this Act applies or not), shall not act as an

Disqualifica-
tion of persons
as inspectors.

(z) Sub-sects. (1) and (2) of this section were repealed and other provisions substituted by sect. 4 of the Coal Mines Regulation Act, 1896, *post*, p. 656.

inspector of mines under this Act, and no inspector shall be a partner or have any interest direct or indirect in any mine in the district under his charge.

Powers of inspectors.

41. An inspector under this Act shall have power to do all or any of the following things; namely:

- (i.) To make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act relating to matters above ground or below ground are complied with in the case of any mine;
- (ii.) To enter inspect and examine any mine, and every part thereof, at all reasonable times by day and night, but so as not to impede or obstruct the working of the mine;
- (iii.) To examine into and make inquiry respecting the state and condition of any mine, or any part thereof, and the ventilation of the mine, and the sufficiency of the special rules for the time being in force in the mine, and all matters and things connected with or relating to the safety of the persons employed in or about the mine or any mine contiguous thereto, or the care and treatment of the horses and other animals used in the mine;
- (iv.) To exercise such other powers as may be necessary for carrying this Act into effect.

Every person who wilfully obstructs any inspector in the execution of his duty under this Act, and every owner agent and manager of a mine who refuses or neglects to furnish to the inspector the means necessary for making any entry inspection examination or inquiry under this Act, in relation to the mine, shall be guilty of an offence against this Act.

Notice by inspector of causes of danger not expressly provided against.

42.—(1.) If in any respect (which is not provided against by any express provision of this Act, or by any special rule) any inspector finds any mine, or any part thereof, or any matter thing or practice in or connected with any such mine (*a*), or with the control, management, or direction thereof by the manager to be dangerous or defective, so as in his opinion to threaten or tend to the bodily injury of any person, he may give notice in writing thereof to the owner, agent or manager of the mine, and shall state in the notice the particulars in which he considers the mine or any part thereof, or any matter thing or practice, to be dangerous or defective, and require the same to be remedied; and unless the same be forthwith remedied shall also report the same to a Secretary of State.

(2.) If the owner agent or manager of the mine objects to remedy the matter complained of in the notice he may, within ten days after receipt of the notice, send his objection in writing, stating the grounds thereof, to a Secretary of State; and thereupon the matter shall be determined by arbitration (*b*) in manner provided by this Act; and the date of the receipt of the objection shall be deemed to be the date of the reference.

(3.) If the owner agent or manager fail, when no objection is sent as aforesaid, to comply with the requisition of the notice within ten days after the expiration of the time for objection, or when there has been an arbitration to comply with the award within the time fixed by the award, he shall be guilty of an offence against this Act, and the notice and award shall respectively be deemed to be written notice of the offence.

Provided that the court, if satisfied that the owner agent or manager has taken active measures for complying with the notice or award, but has not, with reasonable diligence, been able to complete the works, may adjourn any proceedings taken before them for punishing the offence, and, if the works are completed within a reasonable time, no penalty shall be inflicted.

(*a*) *R. v. Spon Lane Colliery Co.*, 3 Q. B. D. 673.

(*b*) *Re an Arbitration between the Home Secretary and Fletcher*, 18 Q. B. D. 339.

(4.) No person shall be precluded by any agreement from doing, or be liable under any contract to any penalty or forfeiture for doing, such acts as may be necessary in order to comply with the provisions of this section.

43. Every inspector of a district under this Act shall make an annual report of his proceedings during the preceding year to a Secretary of State, which report shall be laid before both Houses of Parliament.

Annual reports of inspectors.

44. Where in any mine an explosion or accident has caused loss of life or personal injury to any person, a Secretary of State may at any time direct an inspector to make a special report with respect to the explosion or accident.

Special report of inspectors.

45. Where it appears to a Secretary of State that a formal investigation of any explosion or accident and of its causes and circumstances is expedient, the Secretary of State may direct such investigation to be held, and with respect to any such investigation the following provisions shall have effect :

Formal investigation when directed by Secretary of State.

- (1.) The Secretary of State may appoint a competent person to hold the investigation, and may appoint any person or persons possessing legal or special knowledge to act as assessor or assessors in holding the investigation.
- (2.) The person or persons so appointed (herein-after called the court) shall hold the investigation in open court, in such manner and under such conditions as the court may think most effectual for ascertaining the causes and circumstances of the explosion or accident, and enabling the court to make the report in this section mentioned.
- (3.) The court shall have for the purpose of the investigation all the powers of a court of summary jurisdiction when acting as a court in hearing informations for offences against this Act, and all the powers of an inspector under this Act, and in addition the following powers : namely,
 - (a) Power to enter and inspect any place or building, the entry or inspection whereof appears to the court requisite for the said purpose :
 - (b) Power, by summons signed by the court, to require the attendance of all such persons as it thinks fit to call before it and examine for the said purpose, and for that purpose to require answers or returns to such inquiries as it thinks fit to make :
 - (c) Power to require the production of all books, papers and documents which it considers important for the said purpose :
 - (d) Power to administer an oath and require any person examined to make and sign a declaration of the truth of the statements made by him in his examination :
- (4.) Persons attending as witnesses before the court shall be allowed such expenses as would be allowed to witnesses attending before a court of record ; and in case of dispute as to the amount to be allowed, the same shall be referred by the court to a master of one of her Majesty's superior courts, who on request, signed by the court, shall ascertain and certify the proper amount of the expenses :
- (5.) The court holding an investigation under this section shall make a report to the Secretary of State, stating the causes of the explosion or accident and its circumstances, and adding any observations which the court thinks right to make :
- (6.) All expenses incurred in and about an investigation under this section (including the remuneration of any person appointed to act as assessor) shall be deemed to be part of the expenses of the Secretary of State in the execution of this Act.
- (7.) Any person who without reasonable excuse (proof whereof shall

lie on him either fails, after having had the expenses (if any) to which he is entitled tendered to him, to comply with any summons or requisition of a court holding an investigation under this section, or prevents or impedes the court in the execution of its duty, shall for every such offence be liable to a fine not exceeding ten pounds, and in the case of a failure to comply with a requisition for making any return or producing any document shall be liable to a fine not exceeding ten pounds for every day that such failure continues.

Publication of reports.

46. The Secretary of State may cause any special report of an inspector or any report of a court under this part of this Act to be made public at such time and in such manner as he may think fit.

Arbitration.

Provisions as to arbitrations.

47. With respect to arbitrations under this Act (*c*), the following provisions shall have effect :

- (1.) The parties to the arbitration are in this section deemed to be the owner agent or manager of the mine on the one hand, and the inspector of mines (on behalf of the Secretary of State) on the other :
- (2.) Each of the parties to the arbitration may, within fourteen days after the date of the reference, appoint an arbitrator :
- (3.) No person shall act as arbitrator or umpire under this Act who is employed in or in the management of or is interested in the mine to which the arbitration relates :
- (4.) The appointment of an arbitrator under this section shall be in writing, and notice of the appointment shall be forthwith sent to the other party to the arbitration, and shall not be revoked without the consent of that party :
- (5.) The death removal or other change in any of the parties to the arbitration shall not affect the proceedings under this section :
- (6.) If within the said fourteen days either of the parties fails to appoint an arbitrator, the arbitrator appointed by the other party may proceed to hear and determine the matter in difference, and in that case the award of the single arbitrator shall be final :
- (7.) If before an award has been made any arbitrator appointed by either party dies or becomes incapable to act, or for seven days refuses or neglects to act, the party by whom such arbitrator was appointed may appoint some other person to act in his place ; and if he fails to do so within seven days after notice in writing from the other party for that purpose, the remaining arbitrator may proceed to hear and determine the matter in difference, and in that case the award of the single arbitrator shall be final :
- (8.) In either of the foregoing cases where an arbitrator is empowered to act singly, on one of the parties failing to appoint, the party so failing may, before the single arbitrator has actually proceeded in the arbitration, appoint an arbitrator, who shall then act as if no failure had occurred :
- (9.) If the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time (if any) as may have been appointed for that purpose by both arbitrators under their hands, the matter in difference shall be determined by the umpire appointed as herein-after mentioned :
- (10.) The arbitrators, before they enter on the matter referred to them,

(*c*) See sect. 2 of the Coal Mines Regulation Act, 1896, *post*, p. 655.

shall appoint by writing under their hands an umpire to decide on points on which they may differ :

- (11.) If the umpire dies or becomes incapable of acting before he has made his award, or refuses to make his award within a reasonable time after the matter has been brought within his cognizance, the persons or person who appointed such umpire shall forthwith appoint another umpire in his place :
- (12.) If the arbitrators refuse or fail or for seven days after the request of either party neglect to appoint an umpire, then on the application of either party an umpire may be appointed by the chairman of the general or quarter sessions of the peace, within the jurisdiction of which the mine or any shaft of the mine is situate :
- (13.) The decision of every umpire on the matters referred to him shall be final :
- (14.) If a single arbitrator fails to make his award within twenty-one days after the day on which he was appointed, the party who appointed him may appoint another arbitrator to act in his place :
- (15.) Arrangements shall whenever practicable be made for the matter in difference being heard at the same time before the arbitrators and the umpire :
- (16.) The arbitrators and the umpire or any of them may examine the parties and their witnesses on oath, and may also consult any counsel engineer or scientific person whom they may think it expedient to consult :
- (17.) The payment, if any, to be made to any arbitrator or umpire for his services shall be fixed by the Secretary of State, and together with the costs of the arbitration and award shall be paid by the parties or one of them according as the award may direct. Such costs may be taxed by a master of one of her Majesty's superior courts, who on the written application of either of the parties, shall ascertain and certify the proper amount thereof. The amount, if any, payable by the Secretary of State shall be paid as part of the expenses of inspectors under this Act. The amount, if any, payable by the owner agent or manager may in the event of non-payment be recovered in the same manner as fines under this Act :
- (18.) Every person who is appointed an arbitrator under this section shall be a practical mining engineer, or a person accustomed to the working of mines, and every person who is appointed an umpire under this section shall be a county court judge, a police or stipendiary magistrate, a recorder of a borough, or a registrar of a county court, but when an award has been made under this section the arbitrator or umpire who made it shall be deemed to have been duly qualified as provided by this section.

Coroners.

48. With respect to coroners' inquests on the bodies of persons whose death may have been caused by explosions or accidents in or about mines, the following provisions shall have effect :

- (1.) Where a coroner holds an inquest on the body of any person whose death may have been caused by any explosion or accident, of which notice is required by this Act to be given to the inspector of the district, the coroner shall adjourn the inquest unless an inspector, or some person on behalf of a Secretary of State, is present to watch the proceedings :
- (2.) The coroner, at least four days before holding the adjourned inquest, shall send to the inspector for the district notice in writing of the time and place of holding the adjourned inquest :

Provisions as to coroners' inquests on deaths from accidents in mines.

- (3.) The coroner, before the adjournment, may take evidence to identify the body, and may order the internment thereof :
- (4.) If an explosion or accident has not occasioned the death of more than one person, and the coroner has sent to the inspector of the district notice of the time and place of holding the inquest at such time as to reach the inspector not less than twenty-four hours before the time of holding the same, it shall not be imperative on him to adjourn the inquest in pursuance of this section, if the majority of the jury think it unnecessary so to adjourn :
- (5.) An inspector shall be at liberty at any such inquest to examine any witness, subject nevertheless to the order of the coroner :
- (6.) Where evidence is given at an inquest at which an inspector is not present of any neglect as having caused or contributed to the explosion or accident, or of any defect in or about the mine appearing to the coroner or jury to require a remedy, the coroner shall send to the inspector of the district notice in writing of such neglect or defect :
- (7.) Any person having a personal interest in or employed in or in the management of the mine in which the explosion or accident occurred shall not be qualified to serve on the jury empanelled on the inquest ; and it shall be the duty of the constable or other officer not to summon any person disqualified under this provision, and it shall be the duty of the coroner not to allow any such person to be sworn or to sit on the jury :
- (8.) Any relative of any person whose death may have been caused by the explosion or accident with respect to which the inquest is being held, and the owner agent or manager of the mine in which the explosion or accident occurred, and any person appointed by the order in writing of the majority of the workmen employed at the said mine, shall be at liberty to attend and examine any witness, either in person or by his counsel, solicitor, or agent, subject nevertheless to the order of the coroner.

Every person who fails to comply with the provisions of this section shall be guilty of an offence against this Act.

PART II.—RULES.

General Rules.

General rules.

49. The following general rules shall be observed, so far as is reasonably practicable (*d*), in every mine.

Ventilation of mine.

Rule 1. An adequate amount of ventilation (*e*) shall be constantly produced in every mine to dilute and render harmless noxious gases to such an extent that the working places of the shafts, levels, stables, and workings of the mine, and the travelling roads to and from those working places shall be in a fit state for working and passing therein.

In the case of mines required by this Act to be under the control of a certificated manager, the quantity of air in the respective splits or currents shall at least once in every month be measured and entered in a book to be kept for the purpose at the mine.

Rule 2. Where a fire is caused for ventilation in any mine newly opened after the passing of this Act, the return air, unless it be so diluted as not to be inflammable, shall be carried off clear of the fire by means of a dumb-drift or airway.

(*d*) *Wales v. Thomas*, 16 Q. B. D. 340.

(*e*) *Knowles v. Dickinson*, 29 L. J., M. C. 135; *Brough v. Homfray*, L. R., 3 Q. B. 771.

Rule 3. Where a mechanical contrivance for ventilation is introduced into any mine after the commencement of this Act, it shall be in such a position and placed under such conditions as will tend to ensure its being uninjured by an explosion.

Rule 4. A station or stations shall be appointed at the entrance to the mine, or to different parts of the mine, as the case may require ; and the following provisions shall have effect :

Stations and inspection of condition as to ventilation, &c.

(i.) As to inspection (*f*) before commencing work :—

A competent person or competent persons appointed by the owner agent or manager for the purpose not being contractors for getting minerals in the mine shall, within such time immediately before the commencement of each shift as shall be fixed by special rules made under this Act, inspect every part of the mine situate beyond the station or each of the stations, and in which workmen are to work or pass during that shift, and shall ascertain the condition thereof so far as the presence of gas ventilation, roof and sides, and general safety are concerned.

No workman shall pass beyond any such station until the part of the mine beyond that station has been so examined and stated by such competent person to be safe.

The inspection shall be made with a locked safety lamp, except in the case of any mine in which inflammable gas has not been found within the preceding twelve months.

A report specifying where noxious or inflammable gas, if any, was found present, and what defects (if any) in roofs or sides, and what (if any) other source of danger were or was observed, shall be recorded without delay in a book to be kept at the mine for the purpose, and accessible to the workmen, and such report shall be signed by, and so far as the same does not consist of printed matter shall be in the handwriting of the person who made the inspection.

For the purpose of the foregoing provisions of this rule, two or more shifts succeeding one another without any interval are to be deemed to be one shift.

(ii.) As to the inspection during shifts :—

A similar inspection shall be made in the course of each shift of all parts of the mine in which workmen are to work or pass during that shift, but it shall not be necessary to record a report of the same in a book : Provided that in the case of a mine worked continuously throughout the twenty-four hours by a succession of shifts, the report of one of such inspections shall be recorded in manner above required.

Rule 5. A competent person or competent persons appointed by the owner agent or manager for the purpose, shall, once at least in every twenty-four hours, examine the state of the external parts of the machinery, the state of the guides and conductors in the shafts, and the state of the head gear, ropes, chains, and other similar appliances of the mine which are in actual use both above ground and below ground, and shall once at least in every week examine the state of the shafts by which persons ascend or descend ; and shall make a true report of the result of such examination (*g*), and every such report shall be recorded without delay in a book to be kept at the mine for the purpose, and shall be signed by the person who made the inspection.

Inspection of machinery, &c. above and below ground.

Rule 6. Every entrance to any place which is not in actual use or course of working and extension, shall be properly fenced across the whole width of the entrance, so as to prevent persons inadvertently entering the same.

Fencing of entrances.

Rule 7. If at any time it is found by the person for the time being in charge of the mine, or any part thereof, that by reason of inflammable

Withdrawal of workmen in case of danger.

(*f*) See sect. 5 of the Coal Mines Regulation Act, 1896, *post*, p. 656.

(*g*) *Scott v. Bould*, (1895) 1 Q. B. 9.

gases prevailing in the mine, or that part thereof, or of any cause whatever, the mine or that part is dangerous (*b*), every workman shall be withdrawn from the mine or part so found dangerous, and a competent person appointed for the purpose shall inspect the mine or part so found dangerous, and if the danger arises from inflammable gas shall inspect the mine or part with a locked safety lamp; and in every case shall make a true report of the condition of the mine or part; and a workman shall not, except in so far as is necessary for inquiring into the cause of danger or for the removal thereof, or for exploration, be readmitted into the mine, or part so found dangerous, until the same is stated by the person appointed as aforesaid not to be dangerous. Every such report shall be recorded in a book which shall be kept at the mine for the purpose, and shall be signed by the person who made the inspection.

Rule 8. No lamp or light other than a locked safety lamp (*i*) shall be allowed or used—

(a) In any place in a mine in which there is likely to be any such quantity of inflammable gas as to render the use of naked lights dangerous; or

(b) In any working approaching near a place in which there is likely to be an accumulation of inflammable gas.

And when it is necessary to work the coal in any part of a ventilating district with safety lamps, it shall not be allowable to work the coal with naked lights in another part of the same ventilating district situated between the place where such lamps are being used and the return air-way.

Construction of safety lamps.

Rule 9. Wherever safety lamps are used, they shall be so constructed that they may be safely carried against the air current ordinarily prevailing in that part of the mine in which the lamps are for the time being in use, even though such current should be inflammable.

Examination of safety lamps.

Rule 10. In any mine or part of a mine in which safety lamps are required by this Act or by the special rules made in pursuance of this Act to be used—

(i.) A competent person appointed by the owner agent or manager for the purpose, shall, either at the surface or at the appointed lamp station, examine every safety lamp immediately before it is taken into the workings for use, and ascertain it to be in safe working order and securely locked; and such lamps shall not be used until they have been so examined and found in safe working order and securely locked;

(ii.) A safety lamp shall not be unlocked except either at the appointed lamp station or for the purpose of firing a shot, in conformity with the provisions herein-after contained;

(iii.) A person, unless he has been appointed either for the purpose of examining safety lamps or for the purpose of firing shots, shall not have in his possession any contrivance for opening the lock of any safety lamp;

(iv.) A person shall not have in his possession any lucifer match or apparatus of any kind for striking a light, except within a completely closed chamber attached to the fuse of the shot.

Lamp stations.

Rule 11. Where safety lamps are required to be used, the position of the lamp stations for lighting or re-lighting the lamps shall not be in the return air.

Use of explosives below ground.

Rule 12. Any explosive substance shall only be used in the mine below ground as follows:

(a) It shall not be stored in the mine;

(b) It shall not be taken into the mine, except in cartridges in a secure case (*j*) or canister containing not more than five pounds:

(b) *R. v. Span Lane Colliery Co.*, 3 Q. B. D. 673.

(c) See sect. 5 (2) of the Coal Mines Regulation Act, 1896, *post*, p. 656.

(j) See sect. 23 (2) of the Metalliferous Mines Act, 1872, *ante*, p. 562.

Provided that on the application of the owner agent or manager of any mine, the Secretary of State may by order exempt such mine from so much of this rule as forbids taking an explosive substance into the mine except in cartridges.

- (c) A workman shall not have in use at one time in any one place more than one of such cases or canisters :
- (d) In the process of charging or stemming for blasting, a person shall not use or have in his possession any iron or steel pricker, scraper, charger, tamping rod, or stemmer, [nor shall coal or coal dust be used for tamping (k)] :
- (e) No explosive shall be forcibly pressed into a hole of insufficient size, and, when a hole has been charged, the explosive shall not be unrammed, and no hole shall be bored for a charge at a distance of less than six inches from any hole where the charge has missed fire :
- (f) In any place in which the use of a locked safety lamp is for the time being required by or in pursuance of this Act, or which is dry and dusty, no shot shall be fired except by or under the direction of a competent person appointed by the owner agent or manager of the mine, and such person shall not fire the shot or allow it to be fired until he has examined both the place itself where the shot is to be fired and all contiguous accessible places of the same seam within a radius of twenty yards, and has found such place safe for firing :
- (g) If in any mine, at either of the four inspections under Rule 4 recorded last before a shot is to be fired, inflammable gas has been reported to be present in the ventilating district in which the shot is to be fired, the shot shall not be fired—
 - (1.) Unless a competent person, appointed as aforesaid, has examined the place where gas has been so reported to be present, and has found that such gas has been cleared away, and that there is not at or near such place sufficient gas issuing or accumulated to render it unsafe to fire the shot : or
 - (2.) Unless the explosive employed in firing the shot is so used with water or other contrivance as to prevent it from inflaming gas, or is of such a nature that it cannot inflame gas :
- (h) If the place where a shot is to be fired is dry and dusty, then the shot shall not be fired unless one of the following conditions is observed, that is to say—
 - (1.) Unless the place of firing and all contiguous accessible places within a radius of twenty yards therefrom are at the time of firing in a wet state from thorough watering or other treatment equivalent to watering, in all parts where dust is lodged, whether roof, floor, or sides ; or
 - (2.) In the case of places in which watering would injure the roof or floor, unless the explosive is so used with water or other contrivance as to prevent it from inflaming gas or dust, or is of such a nature that it cannot inflame gas or dust :
- (i) If such dry and dusty place is part of a main haulage road, or is a place contiguous thereto, and showing dust adhering to the roof and sides, no shot shall be fired there unless—
 - (1.) Both the conditions mentioned in sub-head (h) have been observed ; or

(k) Words in brackets repealed, and other words substituted by sect. 5 (3) of the Coal Mines Regulation Act, 1896, *post*, p. 656.

(2.) Unless such one of the conditions mentioned in sub-head (h) as may be applicable to the particular place has been observed, and moreover all workmen have been removed from the seam in which the shot is to be fired, and from all seams communicating with the shaft on the same level, except the men engaged in firing the shot, and such other persons, not exceeding ten, as are necessarily employed in attending to the ventilating furnaces, steam boilers, engines, machinery, winding apparatus, signals, or horses, or in inspecting the mine :

(k) In this Act "ventilating district" means such part of a seam as has an independent intake commencing from a main intake air course, and an independent return airway terminating at a main return air course ; and "main haulage road" means a road which has been, or for the time being is, in use for moving trams by steam or other mechanical power :

(l) Where a seam of a mine is not divided into separate ventilating districts the provisions in this Act relating to ventilating districts shall be read as though the word "seam" were substituted for the words "ventilating district" :

(m) So much of this rule as requires the explosive substance taken into the mine to be in cartridges, and so much of the provisions of sub-head (f) as relates to a dry and dusty place, and the provisions (g), (h), (i), (k), and (l) shall not apply to seams of clay or stratified ironstone which are not worked in connexion with any coal seam, and which contain no coal in the working.

Water and
bore holes.

Rule 13. Where a place is likely to contain a dangerous accumulation of water, the working approaching that place shall not at any point within forty yards of that place exceed eight feet in width, and there shall be constantly kept at a sufficient distance, not being less than five yards, in advance, at least one bore-hole near the centre of the working, and sufficient flank bore-holes on each side.

Signalling
and manholes
for travelling
planes worked
by machinery.

Rule 14. Every underground plane on which persons travel, which is self-acting or worked by an engine windlass or gin, shall be provided (if exceeding thirty yards in length) with some proper means of communicating distinct and definite signals between the stopping places and the ends of the plane, and shall be provided in every case, with sufficient man-holes for places of refuge, at intervals of not more than twenty yards, or if there is not room for a person to stand between the side of a tub and the side of the plane, then (unless the tubs are moved by an endless chain or rope) at intervals of not more than ten yards.

Man-holes for
other
travelling
roads.

Rule 15. Every road on which persons travel underground where the load is drawn by a horse or other animal shall be provided, at intervals of not more than fifty yards, with sufficient man-holes, or with places of refuge, and every such place of refuge shall be of sufficient length, and at least three feet in width, between the waggons running on the road and the side of such road. There shall be at least two proper travelling ways into every steam engine room and boiler gallery.

Man-holes to
be kept clear.

Rule 16. Every man-hole and every place of refuge shall be constantly kept clear, and no person shall place anything in any such man-hole or place of refuge.

Dimensions of
travelling
roads.

Rule 17. Every travelling road on which a horse or other draught animal is used underground shall be of sufficient dimensions to allow the horse or other animal to pass without rubbing against the roof or timbering.

Fencing of
old shafts.

Rule 18. The top of every shaft which for the time being is out of use, or used only as an air shaft, shall be and shall be kept securely fenced.

Fencing of
entrances to
shafts.

Rule 19. The top and all entrances between the top and bottom, including the sump, if any, of every working ventilating or pumping shaft shall be properly fenced, but this shall not be taken to forbid the

temporary removal of the fence for the purpose of repairs or other operations, if proper precautions are used.

Rule 20. Where the natural strata are not safe, every working or pumping shaft shall be securely cased lined or otherwise made secure (*l*). Securing of shafts.

Rule 21. The roof and sides of every travelling road and working place shall be made secure, and a person shall not, unless appointed for the purpose of exploring or repairing, travel or work in any such travelling road or working place which is not so made secure. Securing of roofs and sides.

Rule 22. Where the timbering of the working places is done by the workmen employed therein, suitable timber shall be provided at the working place, gate end, pass bye, siding or other similar place in the mine convenient to the workmen, and the distance between the sprags or holing props where they are required shall not exceed six feet or such less distance as may be ordered by the owner agent or manager. Timbering.

Rule 23. Where there is a downcast and furnace shaft to the same seam, and both such shafts are provided with apparatus in use for raising and lowering persons, every person employed in the mine shall, on giving reasonable notice, have the option of using the downcast shaft. Option of using down-cast shaft.

Rule 24. In any mine which is usually entered by means of machinery, a competent male person not less than twenty-two years of age shall be appointed for the purpose of working the machinery which is employed in lowering and raising persons therein, and shall attend for that purpose during the whole time that any person is below ground in the mine. Attendance of enginemans.

Where any shaft, plane, or level is used for the purpose of communication from one part to another part of a mine, and persons are taken up or down or along such shaft, plane, or level by means of any engine, windlass, or gin, driven or worked by steam or any mechanical power, or by an animal, or by manual labour, the person in charge of such engine, windlass, or gin, or of any part of the machinery, ropes, chains, or tackle connected therewith must be a competent male person not less than eighteen years of age.

Where the machinery is worked by an animal, the person under whose direction the driver of the animal acts, shall for the purposes of this rule, be deemed to be the person in charge of the machinery.

Rule 25. Every working shaft used for the purpose of drawing minerals or for the lowering or raising of persons shall, if exceeding fifty yards in depth, and not exempted in writing by the inspector of the district, be provided with guides and some proper means of communicating distinct and definite signals from the bottom of the shaft and from every entrance for the time being in use between the surface and the bottom of the shaft to the surface, and from the surface to the bottom of the shaft and to every entrance for the time being in use between the surface and the bottom of the shaft. Means of signalling for working shafts.

Rule 26. If in any mine the winding apparatus is not provided with some automatic contrivance to prevent overwinding, then the cage, when men are being raised, shall not be wound up at a speed exceeding three miles an hour, after the cage has reached a point in the shaft to be fixed by the special rules.

Rule 27. A sufficient cover overhead shall be used for every cage or tub employed in lowering or raising persons in any working shaft, except where the cage or tub is worked by a windlass, or where persons are employed at work in the shaft, or where a written exemption is given by the inspector of the district. Cover overhead.

Rule 28. A single linked chain shall not be used for lowering or raising persons in any working shaft or plane except for the short coupling chain attached to the cage or tub. Chains.

Rule 29. There shall be on the drum of every machine used for lowering or raising persons, such flanges or horns, and also if the drum is Prevention of rope slipping on drum.

conical, such other appliances as may be sufficient to prevent the rope from slipping (*m*).

Break and indicator.

Rule 30. There shall be attached to every machine worked by steam, water, or mechanical power, and used for lowering or raising persons, an adequate break or breaks, and a proper indicator (in addition to any mark on the rope) showing to the person who works the machine the position of the cage or tub in the shaft.

If the drum is not on the crank shaft, there shall be an adequate break on the drum shaft.

Fencing machinery.

Rule 31. Every fly-wheel and all exposed and dangerous parts of the machinery used in or about the mine shall be and shall be kept securely fenced.

Safety valves and gauges for boilers.

Rule 32. Each steam boiler, whether separate or one of a range shall have attached to it a proper safety valve, and also a proper steam gauge and water gauge, to show respectively the pressure of steam and the height of water in each boiler.

Barometer, &c.

Rule 33. A barometer and thermometer shall be placed above ground in a conspicuous position near the entrance to the mine.

Stretchers.

Rule 34. Where persons are employed underground, ambulances or stretchers, with splints and bandages, shall be kept at the mine ready for immediate use in case of accident.

Wilful damage.

Rule 35. No person shall wilfully damage, or without proper authority remove or render useless, any fence, fencing, man-hole, place of refuge, casing, lining, guide, means of signalling, signal, cover, chain, flange, horn, break, indicator, steam gauge, water gauge, safety valve, or other appliance or thing provided in any mine in compliance with this Act.

Observance of directions.

Rule 36. Every person shall observe such directions with respect to working as may be given to him with a view to comply with this Act or the special rules in force in the mine.

Books and copies thereof.

Rule 37. The books mentioned in these rules shall be provided by the owner agent or manager, and the books, or a correct copy thereof, shall be kept at the office at the mine, and any inspector under this Act, and any person employed in the mine or any one having the written authority of any inspector or person so employed, may at all reasonable times inspect and take copies of and extracts from any such books: but nothing in these rules shall be construed to impose the obligation of keeping any such book or a copy thereof for more than twelve months after the book has ceased to be used for entries therein under this Act.

Any report by this Act required to be recorded in a book may be partly in print (including lithograph) and partly in writing.

Periodical inspection on behalf of workmen.

Rule 38. The persons employed in a mine may from time to time appoint two of their number or any two persons, not being mining engineers, who are practical working miners, to inspect the mine at their own cost, and the persons so appointed shall be allowed once at least in every month, accompanied, if the owner agent or manager of the mine thinks fit, by himself or one or more officers of the mine, to go to every part of the mine, and to inspect the shafts, levels, planes, working places, return air-ways, ventilating apparatus, old workings, and machinery. Every facility shall be afforded by the owner agent and manager, and all persons in the mine for the purpose of the inspection, and the persons appointed shall forthwith make a true report of the result of the inspection, and that report shall be recorded in a book to be kept at the mine for the purpose, and shall be signed by the persons who made the inspection; and if the report state the existence or apprehended existence of any danger, the owner agent or manager shall forthwith cause a true copy of the report to be sent to the inspector of the district.

Rule 39. No person not now employed as a coal or ironstone getter shall be allowed to work alone as a coal or ironstone getter in the face of the workings until he has had two years' experience of such work under

the supervision of skilled workmen, or unless he shall have been previously employed for two years in or about the face of the workings of a mine.

50. Every person who contravenes or does not comply with any of the general rules in this Act, shall be guilty of an offence against this Act : and in the event of any contravention of or non-compliance with any of the said general rules in the case of any mine to which this Act applies, by any person whomsoever, the owner agent and manager shall each be guilty of an offence against this Act, unless he proves that he had taken all reasonable means, by publishing and to the best of his power enforcing the said rules as regulations for the working of the mine, to prevent such contravention or non-compliance (*n*).

Penalty on non-compliance with rules.

Special Rules.

51.—(1.) There shall be established in every mine such rules (referred to in this Act as (*o*) special rules) for the conduct and guidance of the persons acting in the management of such mine or employed in or about the mine as, under the particular state and circumstances of such mine, may appear best calculated to prevent dangerous accidents, and to provide for the safety convenience and proper discipline of the persons employed in or about the mine.

Special rules for every mine.

(2.) Such special rules, when established, shall be signed in duplicate by the inspector who is inspector of the district at the time the rules are established, and shall be observed in and about every such mine, (including any extension thereof) in the same manner as if they were enacted in this Act.

(3.) If any person who is bound to observe the special rules established for any mine, acts in contravention of or fails to comply with any of them, he shall be guilty of an offence against this Act, and also the owner agent and manager of such mine shall each be guilty of an offence against this Act unless he proves that he had taken all reasonable means, by publishing and to the best of his power enforcing the rules as regulations for the working of the mine, so as to prevent such contravention or non-compliance.

52.—(1.) The owner agent or manager of every mine shall frame and transmit to the inspector of the district, for approval by a Secretary of State, special rules for the mine within three months after the commencement of this Act, or within three months after the commencement (if subsequent to the commencement of this Act) of any working for the purpose of opening a new mine or of renewing the working of an old mine.

Establishment of new special rules.

(2.) The proposed special rules, together with a printed notice specifying that any objection to the rules on the ground of anything contained therein or omitted therefrom may be sent by any of the persons employed in the mine to the inspector of the district, at his address, stated in the notice, shall, during not less than two weeks before the rules are transmitted to the inspector, be posted up in like manner as is provided in this Act respecting the publication of special rules for the information of persons employed in the mine, and a certificate that the rules and notice have been so posted up shall be sent to the inspector with two copies of the rules, signed by the person sending the same.

(3.) If the rules are not objected to by the Secretary of State within forty days after their receipt by the inspector, they shall be established.

53.—(1.) If the Secretary of State is of opinion that the proposed special rules so transmitted, or any of them, do not sufficiently provide for the

Secretary of State may object to special rules.

(*n*) See *Hall v. Hopwood*, 49 L. J. M. C. 17; *Baker v. Carter*, 3 Ex. D. 132; *Wynne v. Forrester*, 5 C. P. D. 361.

(*o*) See sect. 1 of the Coal Mines Regulation Act, 1896, *post*, p. 655. *Howells v. Wynne*, 32 L. J. M. C. 241; and *Higham v. Wright*, 2 C. P. D. 397, are cases decided on special rules.

prevention of dangerous accidents in the mine, or for the safety or convenience of the persons employed in or about the mine, or are unreasonable, he may, within forty days after the rules are received by the inspector, object to the rules, and propose to the owner agent or manager in writing any modifications in the rules by way either of omission alteration substitution or addition.

(2.) If the owner agent or manager does not, within twenty days after the modifications proposed by the Secretary of State are received by him, object in writing to them, the proposed special rules, with those modifications, shall be established.

(3.) If the owner agent or manager sends his objection in writing within the said twenty days to the Secretary of State, the matter shall be referred to arbitration under this Act, and the date of the receipt of the objection by the Secretary of State shall be deemed to be the date of the reference, and the rules shall be established as settled by an award on arbitration.

Amendment of special rules.

54.—(1.) After special rules are established under this Act in any mine, the owner agent or manager of the mine may from time to time propose in writing to the inspector of the district, for the approval of a Secretary of State, any amendment of the rules or any new special rules, and the provisions of this Act with respect to the original special rules shall apply to all such amendments and new rules in like manner, as nearly as may be, as they apply to the original rules.

(2.) A Secretary of State may from time to time propose in writing to the owner agent or manager of the mine any new special rules, or any amendment of the special rules, and the provisions of this Act with respect to a proposal of a Secretary of State for modifying the special rules transmitted by the owner agent or manager of a mine shall apply to all such new special rules and amendments in like manner, as nearly as may be, as they apply to the proposal.

False statements, and neglect to transmit special rules.

55. If the owner agent or manager of any mine makes any false statement with respect to the posting up of the rules and notices, he shall be guilty of an offence against this Act; and if special rules for any mine are not transmitted within the time limited by this Act to the inspector for the approval of a Secretary of State, the owner agent and manager of such mine shall each be guilty of an offence against this Act, unless he proves that he had taken all reasonable means, by enforcing to the best of his power the provisions of this Act, to secure the transmission of the rules.

Certified copy of special rules to be evidence.

56. An inspector under this Act shall, when required, certify a copy which is shown to his satisfaction to be a true copy of any special rules which for the time being are established under this Act in any mine, and a copy so certified shall be evidence (but not to the exclusion of other proof) of such special rules and of the fact that they are duly established under this Act and have been signed by the inspector.

Publication of Abstract of Act and of Special Rules.

Publication of abstract of Act and copy of special rules.

57. For the purpose of making known the provisions of this Act and the special rules to all persons employed in and about each mine, an abstract of this Act supplied, on the application of the owner agent or manager of the mine, by the inspector of the district on behalf of a Secretary of State, and a correct copy of all the special rules shall be published as follows:

(1.) The owner agent or manager of the mine shall cause the abstract and copy of the rules, with the name of the mine and the name and address of the inspector of the district, and the name of the owner or agent and of the manager appended thereto, to be posted up in legible characters, in some conspicuous place at or near the mine, where they may be conveniently read by the persons employed; and so often as the same become defaced

obliterated or destroyed, shall cause them to be renewed with all reasonable despatch :

- (2.) The owner agent or manager shall supply a printed copy of the abstract and the special rules gratis to each person employed in or about the mine who applies for a copy at the office at which the persons immediately employed by the owner, agent, or manager are paid :
- (3.) Every copy of the special rules shall be kept distinct from any rules which depend only on the contract between the employer and employed.

In the event of any non-compliance with the provisions of this section by any person whosoever, the owner agent and manager shall each be guilty of an offence against this Act : but the owner, agent, or manager of such mine shall not be deemed guilty if he proves that he had taken all reasonable means, by enforcing to the best of his power the observance of this section, to prevent such non-compliance.

58. Every person who pulls down, injures, or defaces any abstract, notice, proposed special rules, or special rules when posted up in pursuance of the provisions of this Act, or any notice posted up in pursuance of the special rules, shall be guilty of an offence against this Act.

Pulling down
or defacing
notices.

PART III.—SUPPLEMENTAL.

Legal Proceedings.

59.—(1.) Every person employed in or about a mine, other than an owner agent or manager, who is guilty of any act or omission which in the case of an owner agent or manager would be an offence against this Act, shall be deemed to be guilty of an offence against this Act.

Penalty for
offences
against Act.

(2.) Every person who is guilty of an offence against this Act for which a penalty is not expressly prescribed, shall be liable to a fine not exceeding, if he is an owner agent or manager or under-manager, twenty pounds, and if he is any other person, two pounds, for each offence ; and if an inspector has given written notice of any such offence, to a further fine not exceeding one pound for every day after such notice that such offence continues to be committed.

60. Where a person who is an owner agent manager or under-manager of or a person employed in or about a mine is guilty of any offence against this Act which, in the opinion of the court that tries the case, is one which was reasonably calculated to endanger the safety of the persons employed in or about the mine, or to cause serious personal injury to any of such persons, or to cause a dangerous accident, and was committed wilfully by the person accused, or personal default, or personal negligence of the person accused, such person shall be liable, if the court is of opinion that a fine will not meet the circumstances of the case, to imprisonment, with or without hard labour, for a period not exceeding three months.

Imprisonment
for wilful
neglect
endangering
life or limb.

61.—(1.) All offences under this Act not declared to be misdemeanours, and all fines under this Act, and all money and costs by this Act directed to be recovered as fines, may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts before a court of summary jurisdiction.

Summary
proceedings
for offences,
fines, &c.

(2.) Proceedings for the removal of a check weigher shall be deemed to be a matter on which a court of summary jurisdiction has authority by law to make an order in pursuance of the Summary Jurisdiction Acts : and summary orders under this Act may be made on complaint before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

62. In every part of the United Kingdom the following provisions shall have effect :

General pro-
visions as to
summary
proceedings.

- (i.) Any complaint or information made or laid in pursuance of this

Act shall (save as otherwise expressly provided by this Act) be made or laid within three months from the time when the matter of the complaint or information arose :

(ii.) Any person charged with any offence under this Act, may, if he thinks fit, be sworn and examined as an ordinary witness in the case :

(iii.) The court shall, if required by either party, cause minutes of the evidence to be taken and preserved.

Appeal to
quarter
sessions.

63. If any person feels aggrieved by any conviction made by a court of summary jurisdiction on determining any information under this Act, by which conviction imprisonment or a fine amounting to or exceeding one half the maximum fine, is adjudged, he may appeal therefrom to a court of quarter sessions in manner provided by the Summary Jurisdiction Acts.

Liability for
misrepresentation
as to
age, &c.

64. If it appears that a boy or girl was employed on the representation of his or her parent or guardian that he or she was of the age at which his or her employment would not be in contravention of this Act, and under the belief in good faith that he or she was of that age, or that a person has worked alone as a coal or iron-stone getter on his representation that he has had two years' experience of such work under the supervision of skilled workmen, or that he has been previously employed for two years in or about the face of the workings of a mine, and under the belief in good faith that he has had such experience or has been so previously employed, the owner agent or manager of the mine and employer shall be exempted from any penalty, and the parent or guardian or the person who has so worked alone, as the case may be, shall, for the misrepresentation, be deemed guilty of an offence against this Act.

Prosecution of
owners agents
managers, &c.

65. No prosecution shall be instituted against the owner agent manager or under-manager of a mine for any offence under this Act, not committed personally by such owner agent manager or under-manager, which can be prosecuted before a court of summary jurisdiction, except by an inspector (*p*) or with the consent in writing of a Secretary of State : and in the case of any offence of which the owner agent manager or under-manager of a mine is not guilty if he proves that he had taken all reasonable means to prevent the commission thereof, an inspector shall not institute any prosecution against such owner agent manager or under-manager, if satisfied that he had taken such reasonable means as aforesaid. No prosecution shall be instituted against a coroner for any offence under this Act except with the consent in writing of a Secretary of State.

Report of
result of
proceedings
against
workmen.

66. Where the owner agent or manager of a mine has taken proceedings under this Act against any person employed in or about a mine in respect of an offence committed under this Act, he shall, within twenty-one days after the hearing of the case, report the result thereof to the inspector of the district.

Summary
proceedings for
offences in
Scotland.

67. In Scotland the following provisions shall have effect :

(1.) The court of summary jurisdiction when hearing and determining an information or complaint shall be the sheriff :

(2.) All jurisdictions powers and authorities necessary for the court of summary jurisdiction under this Act are hereby conferred on that court :

(3.) Every person found liable under this Act by a court of summary jurisdiction in any fine, or to pay any money or costs by this Act directed to be recovered as fines, shall be liable in default of immediate payment to be imprisoned for a term not exceeding three months, and the conviction and warrant may be in the form of No. 3 of Schedule K. of the Summary Procedure Act, 1861 :

(4.) Any fine exceeding fifty pounds shall be recovered and enforced

27 & 28 Vict.
c. 53.

(*p*) See sect. 35 of the Metalliferous Mines Act, 1872, *ante*, p. 567.

in the same manner in which any penalty due to her Majesty under any Act of Parliament may be recovered and enforced :

- (5.) An appeal shall not lie from any conviction made by a sheriff, save to the next circuit court, or where there are no circuit courts, to the High Court of Justiciary at Edinburgh, in the manner prescribed by such of the provisions of the Act of the twentieth year of the reign of King George the Second, chapter forty-three, and any Acts amending the same, as relate to appeals in matters criminal, and by and under the rules limitations conditions and restrictions contained in the said provisions.

68.—(1.) Nothing in this Act shall prevent any person from being indicted or liable under any other Act or otherwise to any other or higher penalty or punishment than is provided for any offence by this Act, so, however, that no person be punished twice for the same offence.

(2.) If the court before whom a person is charged with an offence under this Act think that proceedings ought to be taken against such person for such offence under any other Act or otherwise, the court may adjourn the case to enable such proceedings to be taken.

69. A person who is the owner agent or manager of any mine, or a miner or miner's agent, or the father son or brother, or father-in-law, son-in-law, or brother-in-law, of such owner agent or manager, or of a miner or miner's agent, or who is a director of a company being the owner of a mine, shall not, except with the consent of both parties to the case, act as a court or member of a court of summary jurisdiction in respect of any offence under this Act.

70. Where a fine is imposed under this Act for neglecting to send a notice of any explosion or accident or for any offence against this Act which has occasioned loss of life or personal injury, a Secretary of State may (if he thinks fit) direct such fine to be paid to or distributed among the persons injured, and the relatives of any persons whose death may have been occasioned by the explosion accident or offence, or among some of them.

Provided that—

- (i.) Such persons did not in his opinion occasion or contribute to occasion the explosion or accident, and did not commit and were not parties to committing the offence :
- (ii.) The fact of the payment or distribution shall not in any way affect or be receivable as evidence in any legal proceeding relative to or consequential on the explosion, accident, or offence.

Save as afore-said—

All fines recovered in England or Scotland under this Act shall be paid into the receipt of her Majesty's Exchequer, and shall be carried to the Consolidated Fund ;

All fines recovered in Ireland under this Act shall be applied in manner directed by the Fines Act (Ireland), 1851, and any Act amending the same.

Miscellaneous.

71. If any question arises (otherwise than in legal proceedings) whether a mine is a mine to which this Act or the Metalliferous Mines Regulation Act, 1872, or any other Act for the time being in force and relating to metalliferous mines applies, the question shall be referred to a Secretary of State, whose decision thereon shall be final.

72. Any order of or exemption granted by a Secretary of State under this Act may be made, and from time to time revoked, or altered by a Secretary of State, either unconditionally or subject to such conditions as he may see fit, and shall be signed by a Secretary of State or under secretary or assistant under secretary.

73. All notices under this Act shall (unless expressly required to be in print) be in either writing or print (including lithograph), or partly

Saving for proceedings under other Acts,

Owner of mine, &c. not to act as justice, &c. in proceedings under this Act.

Application of fines.

14 & 15 Vict. c. 90.

Decision of question whether a mine is under this Act.

Powers of Secretary of State as to making and revoking orders.

Service of notices.

in writing and partly in print (including lithograph), and all notices and documents required by this Act to be served or sent by or to an inspector may be either delivered personally, or served and sent by post by a prepaid letter; and, if served or sent by post, shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post; and in proving such service or sending it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post.

Application of 38 & 39 Vict. c. 55, s. 38.

74. Section thirty-eight of the Public Health Act, 1875 (which relates to privy accommodation for any house used as a factory or building in which both sexes are employed), shall apply to the portions of a mine which are above ground, and in which girls and women are employed, in like manner as if it were herein re-enacted with the substitution of "those portions of the mine" for the house in the said section mentioned.

Interpretation of terms.

75. In this Act, unless the context otherwise requires,—

"Mine" includes every shaft in the course of being sunk, and every level and inclined plane in the course of being driven, and all the shafts, levels, planes, works, tramways, and sidings, both below ground and above ground, in and adjacent to and belonging to the mine(*q*);

"Shaft" includes pit;

"Plan" includes a correct copy or tracing of any original plan;

"Owner," when used in relation to any mine, means any person or body corporate who is the immediate proprietor or lessee, or occupier of any mine, or of any part thereof, and does not include a person or body corporate who merely receives a royalty, rent, or fine from a mine, or is merely the proprietor of a mine subject to any lease, grant, or license for the working thereof, or is merely the owner of the soil, and not interested in the minerals of the mine; but any contractor for the working of any mine, or any part thereof, shall be subject to this Act in like manner as if he were an owner, but so as not to exempt the owner from any liability;

"Agent," when used in relation to any mine, means any person appointed as the representative of the owner in respect of any mine, or of any part thereof, and as such superior to a manager appointed in pursuance of this Act;

"Secretary of State" means one of her Majesty's Principal Secretaries of State;

"The Treasury" means the Commissioners of her Majesty's Treasury;

"Boy" means a male under the age of sixteen years;

"Girl" means a female under the age of sixteen years;

"Woman" means a female of the age of sixteen years or upwards.

Application of Act to Scotland.

76. In the application of this Act to Scotland—

(1.) The term "Attorney General" means the Lord Advocate;

(2.) The term "injunction" means interdict;

(3.) The term "misdemeanour" means "crime and offence";

(4.) The term "chairman of quarter sessions" means the sheriff of the county;

(5.) The term "sheriff" includes sheriff substitute;

(6.) The term "attending on subpoena before a court of record" means attending on citation the Court of Justiciary;

(7.) The auditor of the sheriff court of the county or district of a county in which any inquiry takes place shall perform the duties of a master of one of the superior courts under this Act;

(8.) "County court judge, police magistrate, stipendiary magistrate,

(*q*) See sect. 3; and compare sect. 41 of the Metalliferous Mines Act, 1872, *ante*, p. 568. A siding on a private railway connected with a colliery was held not to be within this definition: *Turnbull v. Lambton Collieries Co.*, 82 L. T. Rep. 589.

recorder, or registrar of a county court" means a sheriff or sheriff substitute :

- (9.) Notices of explosions, accidents, loss of life, or personal injury shall be deemed to be sent to the inspector of the district on behalf of the Lord Advocate :
- (10.) Sections forty-one and sixteen of the Public Health (Scotland) Act, 1867, shall respectively be substituted for sections thirty-eight and ninety-one of the Public Health Act, 1875. 30 & 31 Vict. c. 100.
- (11.) The term "public elementary school" means State-aided school. Nothing in this Act shall affect any provision in the Education (Scotland) Acts, 1872 to 1883.
77. In the application of this Act to Ireland,— Application of Act to Ireland.
- (a) The expression "the Summary Jurisdiction Acts" means, as regards the Dublin metropolitan police district, the Acts regulating the powers and duties of justices of the peace and of the police of that district, and elsewhere, in Ireland, the petty sessions (Ireland) Act. 1851, and the Acts amending the same.
- (b) In hearing and determining a charge under this Act, a court of summary jurisdiction elsewhere than in the Dublin metropolitan police district, shall be constituted of two or more justices of the peace or of a resident magistrate, with or without other justices, sitting in petty sessions : and a resident magistrate means a magistrate appointed pursuant to the Act of the session of the sixth and seventh years of the reign of King William the Fourth, chapter fourteen :
- (c) Sections forty-eight and one hundred and seven of the Public Health (Ireland) Act, 1878, shall respectively be substituted for sections thirty-eight and ninety-one of the Public Health Act, 1875. 41 & 42 Vict. c. 52.
- (d) The expression "police or stipendiary magistrate" means resident magistrate :
- "Master of one of her Majesty's Superior Courts" means a taxing master of the High Court of Justice in Ireland :
- "Registrar of a county court" means clerk of the peace :
- "London Gazette" means Dublin Gazette :
- "Attorney-General" means Attorney-General for Ireland :
- "Chairman of quarter sessions" means county court judge.

Transitory Provisions and Repeal.

78. The persons who at the commencement of this Act are acting as inspectors under the Acts hereby repealed, and the boards for appointing examiners for managers' certificates under those Acts, shall continue to act in the same manner, and generally to be in the same position, as if they had been respectively appointed under this Act. Existing inspectors and examining boards continued.

79. All orders made by a Secretary of State under any Act repealed by this Act, which are in force immediately before the commencement of this Act, shall be deemed to have been made under this Act ; and all certificates of competency or of service granted under any Act repealed by this Act which are in force immediately before the commencement of this Act, shall be deemed to be first class certificates granted under this Act ; and the register of holders of certificates, and the other registers which at the commencement of this Act are kept in pursuance of the Acts hereby repealed, shall be deemed to be registers or parts of registers kept in pursuance of this Act. Existing certificates and registers continued.

80.—(1.) A certificate of service shall be granted by a Secretary of State to every person who satisfies him either that before the passing of this Act he was exercising, and has since that date exercised, or that he has at any time within five years before the passing of this Act for a period of not less than twelve months exercised, functions substantially corresponding to those of an under-manager in a mine. Grant of certificates of service in case of certain under-managers.

(2.) Every such certificate of service shall contain particulars of the name, place, and time of birth, and the length and nature of the previous service of the person to whom the same is delivered, and a certificate of service may be refused to any person who fails to give a full and satisfactory account of the particulars aforesaid, or to pay such registration fee as the Secretary of State may direct, not exceeding that mentioned in the Second Schedule to this Act.

(3.) A certificate of service granted under this section shall have the same effect for the purposes of this Act as a second class certificate of competency granted under this Act.

Existing
special rules
continued.

81. The special rules which at the commencement of this Act are in force under any Act hereby repealed in any mine shall continue to be the special rules in such mine until special rules are established under this Act for such mine, and while they so continue shall be of the same force as if they were established under this Act.

Temporary
saving for
employment
of boys and
girls between
ten and
twelve.

82. The provisions of this Act shall not—

- (a) Prevent a boy under the age of twelve years who, before the commencement of this Act, is lawfully employed in any mine below ground from continuing to be employed in a mine; nor
- (b) Prevent a boy or girl who, before the commencement of this Act, is lawfully employed above ground in connexion with any mine from continuing to be employed above ground in connexion with a mine; nor
- (c) Prevent a competent male person above the age of eighteen years who before the commencement of this Act is lawfully employed in working the machinery used for lowering and raising persons in a mine from continuing to be so employed;

in like manner and subject to the same provisions and regulations as before the commencement of this Act, and the provisions of the Acts repealed by this Act, with respect to the employment of such boy or girl or competent male person shall continue to apply accordingly.

Construction
of references
to repealed
Acts.

83. Any enactment or document referring to any Act repealed by this Act, or to any enactment thereof, shall be construed to refer to this Act, and to the corresponding enactments thereof.

Repeal of
Acts.

84. The Acts described in Schedule Four to this Act are hereby repealed.

Provided that this repeal shall not affect any exemption granted, or other thing done or suffered before the commencement of this Act; and all offences committed and penalties incurred and proceedings commenced before the commencement of this Act may be punished recovered continued and completed in the same manner as if this Act had not passed.

SCHEDULES.

Section 24.

SCHEDULE ONE.

PROCEEDINGS OF BOARD FOR EXAMINATIONS.

1. The board shall meet for the despatch of business, and shall from time to time make such regulations with respect to the summoning notice place management and adjournment of such meetings, and generally with respect to the transaction and management of business, including the quorum at meetings of the board, as they think fit, subject to the following conditions:—

- (a) Any regulations made by the board constituted under the Acts repealed by this Act, and in force at the commencement of this Act, shall continue in force till repealed or altered by the board.

- (b) An extraordinary meeting may be held at any time on the written requisition of three members of the board addressed to the chairman ;
 - (c) The quorum to be fixed by the board shall consist of not less than three members ;
 - (d) Every question shall be decided by a majority of votes of the members present and voting on that question ;
 - (e) The names of the members present, as well as those voting upon each question, shall be recorded ;
 - (f) No business shall be transacted unless notice in writing of such business has been sent to every member of the board seven days at least before the meeting.
2. The board shall from time to time appoint some person to be chairman, and one other person to be vice-chairman.
3. If at any meeting the chairman is not present at the time appointed for holding the same, the vice-chairman shall be the chairman of the meeting, and if neither the chairman nor vice-chairman shall be present, then the members present shall choose some one of their number to be chairman of such meeting.
4. In case of an equality of votes at any meeting, the chairman for the time being of such meeting shall have a second or casting vote.
5. The appointment of an examiner may be made by a minute of the board signed by the chairman.
6. The board shall keep minutes of their proceedings, which may be inspected or copied by a Secretary of State, or any person authorised by him to inspect or copy the same.

SCHEDULE TWO.

Sections 25
and 30.TABLE OF MAXIMUM FEES TO BE PAID IN RESPECT OF
CERTIFICATES.*First Class Certificate.*

By an applicant for examination . . . Two pounds.
 For copy of certificate Five shillings.

Second Class Certificate.

By an applicant for examination . . . One pound.
 For copy of certificate Two shillings and sixpence.

SCHEDULE III.

Coal Mines Regulation Act, 1887, 50 & 51 Vict. c. 58.

Section 33.

FORM OF RETURN.

This Form to be correctly filled up by the Owner, Agent, or Manager, and sent to the Inspector of the District, on behalf of the Secretary of State, on or before 21st January, every year.

PART A.

Year ending 31st December, 18 . .

Name of Mine
 Situation of Mine
 County
 Name of Owner (Company)
 Name of Manager
 Name of Under Manager
 Postal Address

RETURN OF PERSONS ORDINARILY EMPLOYED DURING THE YEAR.

Under ground . . .	Boys of 12 and under 16	
	Males above 16	
	Total under ground	
Above ground (including those employed on sidings and private branch railways and tramways, and in cleaning, washing, and coking of coal).	Boys of 12 and under 13	
	Girls do.	
	Boys of 13 and under 16.	
	Girls do.	
	Females above 16	
	Males do.	
	Total above ground	
	Total number of persons employed under ground and above ground	

QUANTITY OF MINERAL WROUGHT DURING THE YEAR.

Mineral Wrought.	Number of Statute Tons Wrought.
Coal	
Fireclay	
Ironstone	
Shale—Oil Shale.	
Do. used for other purposes	
Copperas Lumps, or Iron Pyrites . .	
Other Minerals, viz. :—	

THE NUMBER OF DAYS IN EACH MONTH ON WHICH COAL OR IRONSTONE HAS BEEN DRAWN.

	Number of Days on which was drawn	
	1. Coal.	2. Ironstone.
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

Day of 18
(Signed)

PART II.

Name of the Mine

[illegible]

Section 84.

SCHEDULE IV.

REPEAL.

Date of Act.	Title of Act.	Extent of Repeal.
35 & 36 Vict. c. 76 [1872].	The Coal Mines Regulation Act, 1872.	The whole Act.
44 & 45 Vict. c. 26 [1881].	The Stratified Ironstone Mines (Gunpowder) Act, 1881.	The whole Act.
49 & 50 Vict. c. 40 [1886].	The Coal Mines Act, 1886.	The whole Act.

THE SHOP HOURS ACT, 1892.

55 & 56 VICT. c. 62.

An Act to amend the Law relating to the Employment of Young Persons in Shops.
[28th June, 1892.]

Whereas the health of many young persons employed in shops and warehouses is seriously injured by reason of the length of the period of employment :

Be it therefore enacted, &c., as follows :

Short title.

1. This Act may be cited as the Shop Hours Act, 1892 (*r*).

Commence-
ment of Act.

2. This Act shall come into operation on the first day of September, one thousand eight hundred and ninety-two.

Hours of
employment in
shops.

3.—(1.) No young person shall be employed in or about (*x*) a shop for a longer period than seventy-four hours, including meal times, in any one week.

(2.) No young person shall to the knowledge of his employer be employed in or about a shop having been previously on the same day employed in any factory or workshop, as defined by the Factory and Workshop Act, 1878 (*t*), for the number of hours permitted by the said Act or for a longer period than will together with the time during which he has been so previously employed complete such number of hours.

Notice of hours
to be given.

4. In every shop in which a young person is employed a notice shall be kept exhibited by the employer in a conspicuous place referring to the provisions of this Act and stating the number of hours in the week during which a young person may lawfully be employed in that shop (*u*).

Fine for
employing
persons contrary
to the
Act.

5. Where any young person is employed in or about a shop contrary to the provisions of this Act, the employer shall be liable to a fine not exceeding one pound for each person so employed.

(*r*) Amended by the Shop Hours Acts, 1893, *post*, p. 638, and 1895, *post*, p. 653, and to be read and construed as one with those Acts and the Seats for Shop Assistants Act, 1899, *post*, p. 724.

(*s*) A boy employed partly in fetching newspapers to, and delivering them from a newsagent's shop was held to be employed in or about the shop: *Collman v. Roberts*, (1896) 1 Q. B. 457.

(*t*) This Act was repealed by the Factory and Workshop Act, 1901, *post*, p. 726. See the title of that Act and the note appended. Sect. 149 of that Act defines the factories and workshops to which it applies, *post*, p. 778. Part V. deals with special modifications and extensions regarding certain factories and workshops. Part II. contains the limits on the employment of young persons.

(*u*) A penalty for breach of this section is provided by the Shop Hours Act, 1895, *post*, p. 653.

6. Where the employer of any young person is charged with an offence against this Act, he shall be entitled upon information duly laid by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the said employer proves to the satisfaction of the court that he has used due diligence to enforce the execution of the Act, and that the said other person has committed the offence in question without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the occupier shall be exempt from any fine.

Power of occupier to exempt himself from fine on conviction of actual offender.

7. All offences under this Act shall be prosecuted, and all fines under this Act shall be recovered, in like manner as offences and fines are prosecuted and recovered under the Factory and Workshop Act, 1878 (*r*), and sections eighty-eight, eighty-nine, ninety, and ninety-one of the said Act, and so much of section ninety-two thereof as relates to evidence respecting the age of any person, and the provisions relating to the application of the said Act to Scotland and Ireland, so far as those provisions are applicable, shall have effect as if re-enacted in this Act and in terms made applicable thereto.

Summary proceedings.

8. The council of any county or borough, and in the city of London the common council, may appoint such inspectors as they may think necessary for the execution of this Act within the areas of their respective jurisdictions, and sections sixty-eight and seventy of the Factory and Workshop Act, 1878 (*w*), shall apply in the case of any such inspector as if he were appointed under that Act, and as if the expression workshop as used in those sections included any shop within the meaning of this Act.

Appointment of inspectors.

The powers conferred by this section may be exercised in Ireland by the council of any municipal borough and by the commissioners of any town or township.

9. In this Act, unless the context otherwise requires—

“Shop” means retail and wholesale shops, markets, stalls, and ware-houses in which assistants are employed for hire, and includes licensed public-houses and refreshment houses of any kind (*x*).

“Young person” means a person under the age of eighteen years:

Other words and expressions have the same meanings respectively as in the Factory and Workshop Act, 1878.

Interpretation.

10. Nothing in this Act shall apply to a shop where the only persons employed are members of the same family, dwelling in the building of which the shop forms part or to which the shop is attached, or to members of the employer's family so dwelling, or to any person wholly employed as a domestic servant (*y*).

Exemption of members of the same family, and servants.

(*v*) See note (*t*), *supra*, and sects. 143 to 147 of the Factory and Workshop Act, 1901, *post*, p. 776.

(*w*) See note (*t*), *supra*, and sects. 119 and 121 of the Factory Act, 1901, *post*, p. 770.

(*x*) A hotel licensed for the sale of intoxicating liquors, though without a bar or counter, is a shop within this definition: *Savoy Hotel Co. v. London County Council*, (1900) 1 Q. B. 665. For the purposes of sect. 4 a stall for the sale of newspapers at a railway station consisting of a board laid on trestles is not a “shop”: *Smith v. Kyle*, (1902) 1 K. B. 286.

(*y*) A page boy in a hotel, sleeping on the premises, principally employed as a messenger, but partly also in dusting reception rooms, held not to be within this exception: *Savoy Hotel Co. v. London County Council*, (1900) 1 Q. B. 665.

THE SHOP HOURS ACT, 1893.

56 & 57 VICT. c. 67.

An Act to amend the Shop Hours Act, 1892.

[21st December, 1893.]

Be it enacted, &c., as follows :

Short titles.

1. This Act may be cited as the Shop Hours Act, 1893, and this Act and the Shop Hours Act, 1892, may be cited together as the Shop Hours Acts, 1892 and 1893.

Salaries and expenses.

2.—(1.) Any salaries payable or other expenses incurred by the council of a county or a borough for the purposes of the Shop Hours Act, 1892, shall be defrayed by the council of a county out of the county fund, and by the council of a borough out of the borough fund or borough rate.

(2.) In Ireland, such salaries and expenses shall be defrayed, if payable or incurred by the council of a municipal borough out of the borough fund or borough rate, and, if payable or incurred by the commissioners of a town or township, out of any rate leviable by them as such commissioners throughout the whole of their district.

Definitions.

3. In the application to Scotland of the Shop Hours Act, 1892, and of this Act,—

The expression “council of a county or a borough” means the county council of a county and the commissioners of police of burghs in which there are such commissioners, and in burghs in which there are no such commissioners the town council.

The expressions “county fund” shall mean the general purposes rate, and “borough fund or borough rate” shall mean, in burghs in which there are commissioners of police, the police assessment, or in their option the public health assessment; and in burghs in which there are no such commissioners any assessment levied by the town council.

NOTICE OF ACCIDENTS ACT, 1894.

57 & 58 VICT. c. 28.

An Act for providing for notice of and inquiry into Accidents occurring in certain Employments and Industries.

[20th July, 1894.]

Be it enacted, &c., as follows :

Notice to Board of Trade of accidents in certain employments.

1.—(1.) Where there occurs in any employment to which this section applies any accident which causes to any person employed therein either loss of life or such bodily injury as to prevent him on any one of the three working days next after the occurrence of the accident from being employed for five hours on his ordinary work, his employer shall, as soon as possible and, in case of an accident not resulting in death, not later than six days after the occurrence of the accident, send to the Board of Trade notice in writing of the accident, specifying the time and place of its occurrence, its probable cause, the name and residence of any person killed or injured, the work on which any such person was employed at the time of the accident, and, in the case of an injury, the nature of the injury.

(2.) If any person wilfully makes default in complying with the requirements of this section he shall be liable on summary conviction to a fine not exceeding forty shillings.

(3.) For the purpose of this section the expression "working day" shall mean a day on which the person injured would, but for the injury, be employed in his ordinary work.

2.—(1.) Section one of this Act shall apply to the employments specified in the schedule to this Act.

(2.) If the Board of Trade are of opinion that any other employment in which twenty persons or more, not being domestic servants, are employed by the same employer, is specially dangerous to life or limb, the Board may, by order, direct that section one of this Act shall apply to that employment, and thereupon, while the order is in force, that section shall apply accordingly.

(3.) The Board of Trade may, by order, revoke or modify any order made under the foregoing powers, and modify or limit the application of section one of this Act to the employments specified in the schedule to this Act.

(4.) The Board of Trade may also, by order, require any further particulars to be specified in the notice to be sent in pursuance of section one of this Act.

(5.) Every order made under this section shall be notified in the London Gazette and in such other manner as may appear to the Board of Trade sufficient for giving publicity thereto, and shall be laid before both Houses of Parliament as soon as may be after it is made.

3. Where it appears to the Board of Trade that any accident involving loss of life or bodily injury is of sufficient importance to require a formal investigation of the accident, and of its causes and circumstances, the Board may by order direct such investigation to be held, and with respect to any such investigation the following provisions shall have effect :—

(1.) The Board may appoint a competent person to hold the investigation, and may appoint any person possessing legal, medical, or special knowledge to act as assessor in holding the investigation, and may assign to any such person such remuneration as the Board, with the approval of the Treasury, determine :

(2.) The person appointed to hold the investigation (herein-after called the court) shall hold the same in open court in such manner and under such conditions as the court may think most effectual for ascertaining the causes and circumstances of the accident, and enabling the court to make the report in this section mentioned :

(3.) The court shall have for the purpose of the investigation all the powers of a court of summary jurisdiction when acting as a court in the exercise of its ordinary jurisdiction, and all the powers of an inspector under the Railway Regulation Acts, 1840 to 1889, and in addition the following powers ; namely—

(a) Power to enter and inspect, or to authorise any person to enter and inspect, any place or building the entry or inspection whereof appears to the court requisite for the said purpose ;

(b) Power, by summons signed by the court, to require the attendance of all such persons as it thinks fit to call before it and examine for the said purpose, and for that purpose to require answers or returns to such inquiries as it thinks fit to make ;

(c) Power to require the production of all books, papers, and documents which it considers important for the said purpose ;

(d) Power to administer an oath and require any person examined to make and sign a declaration of the truth of the statements made by him in his examination :

(4.) Every person attending as a witness before the court, and not being the employer of the person killed or injured, or in the employment of that employer, shall be allowed such expenses as would be allowed to a witness attending before a court of record,

Application of provisions as to notice.

Power to hold formal investigation in case of serious accidents.

and in case of dispute as to the amount to be allowed the same shall be referred by the court to a master of the Supreme Court, who on request signed by the court shall ascertain and certify the proper amount of the expenses :

- (5.) The court holding an investigation under this section shall make a report to the Board of Trade, stating the causes of the accident and its circumstances, and adding any observations which the court thinks right to make, and the Board may cause any such report to be made public in such manner as the Board think fit :
- (6.) The court may order any costs and expenses incurred in and about an investigation under this section (including any remuneration payable to any person appointed to hold the investigation or to act as assessor) to be paid by any person summoned before it, if it finds that the accident was due to the act or default or negligence of that person ; and any such order shall, on the application of any person entitled to the benefit thereof, be enforced by any court of summary jurisdiction as if the costs and expenses were a penalty imposed by the court ; but subject to any such order such costs and expenses shall be deemed to be part of the expenses of the Board of Trade in the execution of this Act :
- (7.) If any person without reasonable excuse (proof whereof shall lie on him) either fails, after having had the expenses (if any) to which he is entitled tendered to him, to comply with any summons or requisition of a court holding an investigation under this section, or prevents or impedes the court in the execution of its duty, he shall for every such offence be liable, on summary conviction, to a fine not exceeding ten pounds, and in the case of a failure to comply with a requisition for making any return or producing any document shall be liable, on summary conviction, to a fine not exceeding ten pounds for every day that such failure continues.

Expenses of
Board of
Trade.

4. The expenses of the Board of Trade in the execution of this Act shall be defrayed out of moneys to be provided by Parliament.

Application to
Government
departments.

5. This Act shall apply in the case of accidents occurring to persons employed by a department of the Government, and in such cases the notice to be given by the employer shall be given by such person as the department by general rule direct.

Savings.

6. Nothing in this Act shall apply to any employment which is for the time being regulated by any Act of Parliament administered by the Secretary of State or by inspectors appointed by him, or shall require notice to be given of any accident of which notice is required by any other Act to be given to the Board of Trade.

Application to
Scotland.

7. In the application of this Act to Scotland—

The expression "court of summary jurisdiction" shall mean the sheriff :

The expression "master of the Supreme Court" shall mean the auditor of the Court of Session.

Every order made under this Act and required to be notified in the London Gazette, shall, if it relates to Scotland, be notified in the Edinburgh Gazette.

Application to
Ireland.

8. In the application of this Act to Ireland the expression "master of the Supreme Court" shall mean a taxing master of the Supreme Court.

Every order made under this Act and required to be notified in the London Gazette, shall, if it relates to Ireland, be notified in the Dublin Gazette.

Short title.

9. This Act may be cited as the Notice of Accidents Act, 1894.

SCHEDULE.

1 (z). Construction, use, working, or repair of any railway, tramroad, tramway, [gaswork,] canal, bridge, tunnel, [harbour, dock, port, pier, quay,] or other work authorised by any local or personal Act of Parliament.

[*Paragraph 2 was repealed by the Factory and Workshop Act, 1895.*]

3. Use or working of any traction engine or other engine or machine worked by steam in the open air.

THE PREVENTION OF CRUELTY TO CHILDREN
ACT, 1894.

57 & 58 VICT. c. 41.

An Act to consolidate the Acts relating to the Prevention of Cruelty to, and Protection of, Children.

[17th August, 1894.]

Be it enacted, &c. as follows:—

Cruelty to Children.

1.—(1.) If any person over the age of sixteen years who has the custody, charge, or care of any child under the age of sixteen years, wilfully assaults, ill-treats, neglects (a), abandons, or exposes such child, or causes or procures such child to be assaulted, ill-treated, neglected, abandoned, or exposed in a manner likely to cause such child unnecessary suffering, or injury to its health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement), that person shall be guilty of a misdemeanor; and

Punishment
for cruelty to
children.

(a) on conviction on indictment, shall be liable, at the discretion of the court, to a fine not exceeding one hundred pounds, or alternatively, or in default of payment of such fine, or in addition thereto, to imprisonment, with or without hard labour, for any term not exceeding two years; and

(b) on summary conviction shall be liable, at the discretion of the court, to a fine not exceeding twenty-five pounds, or alternatively, or in default of payment of such fine, or in addition thereto, to imprisonment, with or without hard labour for any term not exceeding six months.

(2.) A person may be convicted of an offence under this section either on indictment or by a court of summary jurisdiction notwithstanding the death of the child in respect of whom the offence is committed.

(3.) If it is proved that a person indicted under this section was interested in any sum of money accruable or payable in the event of the death of the child, and had knowledge that such sum of money was accruing or becoming payable, the court, in its discretion, may

(a) increase the amount of the fine under this section so that the fine does not exceed two hundred pounds: or

(b) in lieu of awarding any other penalty under this section, sentence the person indicted to penal servitude for any term not exceeding five years.

(z) The words in brackets were repealed by the Factory and Workshop Act, 1895 (58 & 59 Vict. c. 37).

(a) A member of a sect called the "Peculiar People" was convicted under this section, where he had deliberately abstained on religious grounds from providing medical aid and medicine for his child whom he knew to be dangerously ill: *R. v. Senior*, (1899) 1 Q. B. 283.

(4.) A person shall be deemed to be interested in a sum of money under this section if he has any share in or any benefit from the payment of that money, though he is not a person to whom it is legally payable.

(5.) An offence under this section is in this Act referred to as an offence of cruelty.

Restrictions on Employment of Children.

Restrictions
on employment
of children.

2. If any person—

- (a) causes or procures any child, being a boy under the age of fourteen years, or being a girl under the age of sixteen years, or, having the custody, charge, or care of any such child, allows that child, to be in any street, premises, or place for the purpose of begging or receiving alms, or of inducing the giving of alms, whether under the pretence of singing, playing, performing, offering anything for sale, or otherwise ; or
- (b) causes or procures any child, being a boy under the age of fourteen years, or being a girl under the age of sixteen years, or, having the custody, charge, or care of any such child, allows that child, to be in any street, or in any premises licensed for the sale of any intoxicating liquor, other than premises licensed according to law for public entertainments, for the purpose of singing, playing, or performing for profit, or offering anything for sale, between nine p.m. and six a.m. ; or
- (c) causes or procures any child under the age of eleven years, or, having the custody, charge, or care of any such child, allows that child, to be at any time in any street, or in any premises licensed for the sale of any intoxicating liquor, or in premises licensed according to law for public entertainments, or in any circus or other place of public amusement to which the public are admitted by payment, for the purpose of singing, playing, or performing for profit, or offering anything for sale ; or
- (d) causes or procures any child under the age of sixteen years, or, having the custody, charge, or care of any such child, allows that child to be in any place for the purpose of being trained as an acrobat, contortionist, or circus performer, or of being trained for any exhibition or performance which in its nature is dangerous,

that person shall, on summary conviction, be liable, at the discretion of the court, to a fine not exceeding twenty-five pounds, or alternatively, or in default of payment of such fine, or in addition thereto, to imprisonment, with or without hard labour, for any term not exceeding three months.

Provided that—

- (i.) This section shall not apply in the case of any occasional sale or entertainment the net proceeds of which are wholly applied for the benefit of any school or to any charitable object, if such sale or entertainment is held elsewhere than in premises which are licensed for the sale of any intoxicating liquor but not licensed according to law for public entertainments, or if, in the case of a sale or entertainment held in any such premises as aforesaid, a special exemption from the provisions of this section has been granted in writing under the hands of two justices of the peace ; and
- (ii.) Any local authority may, if they think it necessary or desirable so to do, from time to time by bye-law extend or restrict the hours mentioned in paragraph (b) of this section, either on every day or on any specified day or days of the week, and either as to the whole of their district or as to any specified area therein ; and
- (iii.) Paragraphs (c) and (d) of this section shall not apply in any case in respect of which a licence granted under this Act is in force, so far as that licence extends ; and

(iv.) Paragraph (d) of this section shall not apply in the case of a person who is the parent or legal guardian of a child, and himself trains the child.

3.—(1.) A petty sessional court, or in Scotland the School Board, may, notwithstanding anything in this Act, grant a licence for such time and during such hours of the day, and subject to such restrictions and conditions as the court or board think fit, for any child exceeding seven years of age,—

Licences for
employment
of children.

(a) to take part in any entertainment or series of entertainments to take place in premises licensed according to law for public entertainments, or in any circus or other place of public amusement as aforesaid; or

(b) to be trained as aforesaid; or

(c) for both purposes;

if satisfied of the fitness of the child for the purpose, and if it is shown to their satisfaction that proper provision has been made to secure the health and kind treatment of the children taking part in the entertainment or series of entertainments or being trained as aforesaid, and the court or board may, upon sufficient cause, vary, add to, or rescind any such licence.

And such licence shall be sufficient protection to all persons acting under or in accordance with the same.

(2.) A Secretary of State may assign to any inspector appointed under section sixty-seven of the Factory and Workshop Act, 1878 (*aa*), specially and in addition to any other usual duties, the duty of seeing whether the restrictions and conditions of any licence under this section are duly complied with, and any such inspector shall have the same power to enter, inspect, and examine any place of public entertainment at which the employment of a child is for the time being licensed under this section as an inspector has to enter, inspect, and examine a factory or workshop under section sixty-eight of the same Act.

(3.) Where any person applies for a licence under this section he shall, at least seven days before making the application, give notice thereof to the chief officer of police for the district in which the licence is to take effect, and that officer may appear or instruct some person to appear before the authority hearing the application, and show cause why the licence should not be granted, and the authority to whom the application is made shall not grant the same unless they are satisfied that notice has been properly so given.

(4.) Where a licence is granted under this section to any person, that person shall, not less than ten days after the granting of the licence, cause a copy thereof to be sent to the inspector of factories and workshops acting for the district in which the licence is to take effect, and if he fails to cause such copy to be sent, shall be liable on summary conviction to a fine not exceeding five pounds.

(5.) Nothing in this or in the last preceding section shall affect the provisions of the Elementary Education Act, 1876, or the Education (Scotland) Act, 1878.

Arrest of Offender and Provision for Safety of Children.

4.—(1.) Any constable may take into custody, without warrant, any person—

(a) who within view of such constable commits an offence under this Act, or any of the offences mentioned in the schedule to this Act, where the name and residence of such person are unknown to such constable and cannot be ascertained by such constable; or

(b) who has committed or who he has reason to believe has committed any offence of cruelty within the meaning of this Act, or any of

39 & 40 Vict.
c. 79.

41 & 42 Vict.
c. 78.

Power to take
offenders
into custody.

(*aa*) See now sect. 118 of the Factory and Workshop Act, 1901, *post*, p. 769.

the offences mentioned in the schedule to this Act, if he has reasonable ground for believing that such person will abscond, or if the name and address of such person are unknown to and cannot be ascertained by the constable.

(2.) Where a constable arrests any person without a warrant in pursuance of this section, the inspector or constable in charge of the station to which such person is conveyed shall, unless in his belief the release of such person on bail would tend to defeat the ends of justice, or to cause injury or danger to the child against whom the offence is alleged to have been committed, release the person arrested on his entering into such a recognisance, with or without sureties, as may in his judgment be required to secure the attendance of such person upon the hearing of the charge.

Detention of
child in place
of safety.

5.—(1.) A constable may take to a place of safety any child in respect of whom an offence under paragraph (a) of section two of this Act has been committed, or in respect of whom an offence of cruelty within the meaning of this Act, or any of the offences mentioned in the schedule to this Act has been, or there is reason to believe has been, committed.

(2.) A child so taken to a place of safety, and also any child under the age of sixteen years who seeks refuge in a place of safety, may there be detained until it can be brought before a court of summary jurisdiction, and that court may make such order as is mentioned in the next following sub-section, or may cause the child to be dealt with as circumstances may admit and require until the charge made against any person in respect of any offence as aforesaid with regard to the child has been determined by the committal for trial, or conviction, or discharge of such person.

(3.) Where it appears to a court of summary jurisdiction or any justice that an offence of cruelty within the meaning of this Act or any of the offences mentioned in the schedule to this Act has been committed in the case of any child that is brought before such court or justice, and that the health or safety of the child will be endangered unless an order is made under this sub-section, the court or justice may, without prejudice to any other power under this Act, make such order as circumstances require for the care and detention of the child until a reasonable time has elapsed for a charge to be made against some person for having committed the offence, and, if a charge is made against any person within that time, until the charge has been determined by the committal for trial or conviction or discharge of that person, and any such order may be carried out notwithstanding that any person claims the custody of the child.

(4.) Boards of guardians, and, in Scotland, parochial boards, shall provide for the reception of children brought to a workhouse in pursuance of this Act, and where the place of safety to which a constable takes a child is a workhouse, the master shall receive the child into the workhouse if there is suitable accommodation therein for the same, and shall detain the child until the case is determined, and any expenses incurred in respect of the child shall be deemed to be expenses incurred in the relief of the poor.

Disposal of
child by order
of court.

6.—(1.) Where a person having the custody, charge, or care of a child under the age of sixteen years has been—

- (a) convicted of committing in respect of such child an offence of cruelty within the meaning of this Act, or any of the offences mentioned in the schedule to this Act; or
- (b) committed for trial for any such offence; or
- (c) bound over to keep the peace towards such child,

by any court, that court either at the time when the person is so convicted, committed for trial, or bound over, and without requiring any new proceedings to be instituted for the purpose, or at any other time, and also any petty sessional court before which any person may bring the case, may, if satisfied on inquiry that it is expedient so to deal with

the child, order that the child be taken out of the custody of the person so convicted, committed for trial, or bound over, and be committed to the custody of a relation of the child, or some other fit person named by the court (such relation or other person being willing to undertake such custody), until it attains the age of sixteen years, or for any shorter period, and may of its own motion or on the application of any person from time to time by order renew, vary, and revoke any such order; but no order shall be made under this section unless a parent of the child has been convicted of or committed for trial for the offence, or is under committal for trial for having been or has been proved to have been party or privy to the offence, or has been bound over to keep the peace towards such child.

(2.) Every order under this section shall be in writing, and any such order may be made by the court in the absence of the child; and the consent of any person to undertake the custody of a child in pursuance of any such order shall be proved in such manner as the court may think sufficient to bind him.

(3.) Where an order is made under this section in respect of a person who has been committed for trial, then if that person is acquitted of the charge, or if the charge is dismissed for want of prosecution, the order shall forthwith be void except with regard to anything that may have been lawfully done under it.

(4.) A Secretary of State in England, and in Scotland the Secretary for Scotland, and in Ireland the Lord Lieutenant of Ireland, may at any time in his discretion discharge a child from the custody of any person to whose custody it is committed in pursuance of this section, either absolutely or on such conditions as such Secretary of State, Secretary, or Lord Lieutenant, approves, and may, if he thinks fit, make rules in relation to children so committed to the custody of any person, and to the duties of such persons with respect to such children.

(5.) A Secretary of State, in any case where it appears to him to be for the benefit of a child who has been committed to the custody of any person in pursuance of this section, may empower such person to procure the emigration of the child, but, except with such authority, no person to whose custody a child is so committed shall procure its emigration.

7.—(1.) Any person to whose custody a child is committed under this Act shall, whilst the order is in force, have the like control over the child as if he were its parent, and shall be responsible for its maintenance, and the child shall continue in the custody of such person, notwithstanding that it is claimed by its parent.

(2.) Any court having power so to commit a child shall have power to make the like orders on the parent of the child to contribute to its maintenance during such period as aforesaid as if the child were detained under the Industrial Schools Acts, but the limit on the amount of the weekly sum which the parent of a child may be required, under this section, to contribute to its maintenance shall be one pound a week instead of the limit fixed by the Industrial School Acts.

(3.) Any such order may be made on the complaint or application of the person to whose custody the child is for the time being committed, and either at the time when the order for the child's committal to custody is made, or subsequently, and the sum contributed by the parent shall be paid to such person as the court may name, and be applied for the maintenance of the child.

(4.) If a person fails to pay any sum payable by him in pursuance of any such order, he may be dealt with in like manner as if the sum were due from him in pursuance of an order under the Bastardy Law Amendment Act, 1872, or in Scotland were a sum decreed for aliment, or in Ireland were a sum ordered to be paid by him under the Summary Jurisdiction (Ireland) Acts.

(5.) Where an order under this Act to commit a child to the custody of some relation or other person is made in respect of a person who has

Maintenance of child when committed to custody of any person under order of court.

Religious
persuasion
of person to
whom child
is committed.

been committed for trial for an offence, the court shall not have power to order the parent of the child to contribute to its maintenance prior to the trial of that person.

8.—(1.) In determining on the person to whose custody the child shall be committed under this Act, the court shall endeavour to ascertain the religious persuasion to which the child belongs, and shall, if possible, select a person of the same religious persuasion, or a person who gives such undertaking as seems to the court sufficient that the child shall be brought up in accordance with its own religious persuasion, and such religious persuasion shall be specified in the order.

(2.) In every case where the child has been placed pursuant to any such order with a person who is not of the same religious persuasion as that to which the child belongs or who has not given such undertaking as aforesaid the court shall, on the application of any person in that behalf, and on its appearing that a fit person who is of the same religious persuasion or who will give such undertaking as aforesaid, is willing to undertake the custody, make an order to secure his being placed with a person who either is of the same religious persuasion or gives such undertaking as aforesaid.

(3.) Where a child has been placed with a person who gives such undertaking as aforesaid, and the undertaking is not observed, the child shall be deemed to have been placed with a person not of the same religious persuasion as that to which the child belongs as if no such undertaking had been given.

Interchange of
powers under
Industrial
Schools Acts
and this Act.

9.—(1.) Where any child under the age of sixteen years is brought before a petty sessional court under circumstances authorising the court to deal with the child under the Industrial Schools Acts, the court, if it thinks fit, in lieu of ordering that the child be sent to an industrial school, may make an order under this Act for the committal of the child to the custody of a relation or person named by the court.

(2.) Where a court orders a child to be sent to an industrial school, the order may, at the discretion of the court, be made to take effect either immediately or at any later time specified therein, regard being had to the age or health of the child; and if the order is not made to take effect immediately, or if at the time specified for the order to take effect the child is deemed unfit to be sent to an industrial school, the court may commit the child to the custody of a relation or person named by the court, as provided by this Act, until the time so specified or the time when the order actually takes effect.

Warrant to
search for and
remove a
child.

10.—(1.) If it appears to any stipendiary magistrate or to any two justices of the peace, on information made before him or them on oath by any person who, in the opinion of the magistrate or justices, is *bona fide* acting in the interests of a child under the age of sixteen years, that there is reasonable cause to suspect that such a child has been or is being assaulted, ill-treated or neglected in any place within the jurisdiction of such magistrate or justices in a manner likely to cause the child unnecessary suffering or to be injurious to its health, or that any offence mentioned in the schedule to this Act has been or is being committed in respect of such a child, such magistrate or justices may issue a warrant authorising any person named therein to search for such child, and if it is found to have been or to be assaulted, ill-treated, or neglected in manner aforesaid, or that any such offence as aforesaid has been or is being committed in respect of the child, to take it to and detain it in a place of safety, until it can be brought before a court of summary jurisdiction, or authorising any person to remove the child with or without search to a place of safety and detain it there until it can be brought before a court of summary jurisdiction; and the court before whom the child is brought may cause it to be dealt with in the manner provided by section five of this Act.

Provided that—

(a) the powers hereinbefore conferred on any two justices may be

exercised by any one justice, if upon the information it appears to him to be a case of urgency; and

(b) in the case of Scotland the jurisdiction hereby conferred on a magistrate or two justices shall be exercised only by a sheriff or sheriff substitute.

(2.) Any person issuing a warrant under this section may by the same warrant cause any person accused of any offence in respect of the child to be apprehended and brought before a justice, and proceedings to be taken for punishing such person according to law.

(3.) Any person authorised by warrant under this section to search for any child, or to remove any child with or without search, may enter (if need be by force) any house, building, or other place specified in the warrant, and may remove the child therefrom.

(4.) Every warrant issued under this section shall be addressed to and executed by some superintendent, inspector, or other superior officer of police, who shall be accompanied by the person making the information, if such person so desire, unless the persons by whom the warrant is issued otherwise direct, and may also, if the persons by whom the warrant is issued so direct, be accompanied by a registered medical practitioner.

(5.) It shall not be necessary in any information or warrant under this section to name the child.

Power as to Habitual Drunkards.

11. Where it appears to the court by or before which any person is convicted of the offence of cruelty within the meaning of this Act, or of any of the offences mentioned in the schedule to this Act, that that person is a parent of the child in respect of whom the offence was committed, or is living with the parent of the child, and is an habitual drunkard within the meaning of the Inebriates Acts, 1879 and 1888, the court, in lieu of sentencing such person to imprisonment, may, if it thinks fit, make an order for his detention for any period named in the order not exceeding twelve months in a retreat under the said Acts, the licensee of which is willing to receive him, and the said order shall have the like effect, and copies thereof shall be sent to the local authority and Secretary of State in like manner as if it were an application duly made by such person and duly attested by two justices under the said Acts; and the court may order an officer of the court or constable to remove such person to the retreat, and on his reception the said Act shall have effect as if he had been admitted in pursuance of an application so made and attested as aforesaid:

Power as to
habitual
drunkards.

42 & 43 Vict.
c. 19.
51 & 52 Vict.
c. 19.

Provided that—

- (a) an order for the detention of a person in a retreat shall not be made under this section unless that person, having had such notice as the court deems sufficient of the intention to allege habitual drunkenness, consents to the order being made; and,
- (b) if the wife or husband of such person, being present at the hearing of the charge, objects to the order being made, the court shall, before making the order, take into consideration any representation made to it by the wife or husband: and
- (c) before making the order the court shall, to such extent as it may deem reasonably sufficient, be satisfied that provision will be made for defraying the expenses of such person during detention in a retreat.

Evidence and Procedure.

12. In any proceeding against any person for an offence under this Act or for any of the offences mentioned in the schedule to this Act, such person shall be competent but not compellable (b) to give evidence,

Evidence of
accused person.

(b) Sect. 1 of the Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), applies to proceedings under this Act, and therefore a defendant who gives

and the wife or husband of such person may be required to attend to give evidence as an ordinary witness in the case, and shall be competent but not compellable to give evidence.

Extension of
power to take
deposition of
child.

13.—(1.) Where a justice is satisfied by the evidence of a registered medical practitioner that the attendance before a court of any child, in respect of whom an offence of cruelty within the meaning of this Act or any of the offences mentioned in the schedule to this Act is alleged to have been committed, would involve serious danger to its life or health, the justice may take in writing the deposition of such child on oath, and shall thereupon subscribe the same and add thereto a statement of his reason for taking the same, and of the day when and place where the same was taken, and of the names of the persons (if any) present at the taking thereof.

(2.) The justice taking any such deposition shall transmit the same with his statement—

(a) if the deposition relates to an offence for which any accused person is already committed for trial, to the proper officer of the court for trial at which the accused person has been committed; and

(b) in any other case to the clerk of the peace of the county or borough in which the deposition has been taken;

and the clerk of the peace to whom any such deposition is transmitted shall preserve, file, and record the same.

Admission of
deposition of
child in
evidence.

14. Where on the trial of any person on indictment for any offence of cruelty within the meaning of this Act or any of the offences mentioned in the schedule to this Act, the court is satisfied by the evidence of a registered medical practitioner that the attendance before the court of any child in respect of whom the offence is alleged to have been committed would involve serious danger to its life or health, any deposition of the child taken under the Indictable Offences Act, 1848, or the Indictable Offences (Ireland) Act, 1849, or the Petty Sessions (Ireland) Act, 1851, or this Act, shall be admissible in evidence either for or against the accused person without further proof thereof—

(a) if it purports to be signed by the justice by or before whom it purports to be taken; and

(b) if it is proved that reasonable notice of the intention to take the deposition has been served upon the person against whom it is proposed to use the same as evidence, and that that person or his counsel or solicitor had, or might have had if he had chosen to be present, an opportunity of cross-examining the child making the deposition.

Evidence of
child of tender
years.

15.—(1.) Where in any proceeding against any person for an offence under this Act or for any of the offences mentioned in the schedule to this Act, the child in respect of whom the offence is charged to have been committed, or any other child of tender years who is tendered as a witness, does not in the opinion of the court understand the nature of an oath, the evidence of such child may be received, though not given upon oath, if, in the opinion of the court, such child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth: and the evidence of such child, though not given on oath but otherwise taken and reduced into writing, in accordance with the provisions of section seventeen of the Indictable Offences Act, 1848, or of section fourteen of the Petty Sessions (Ireland) Act, 1851, or of section thirteen of this Act, shall be deemed to be a deposition within the meaning of those sections respectively:

Provided that—

(a) A person shall not be liable to be convicted of the offence unless

evidence on his own behalf under this section shall not be asked or required to answer any question tending to show that he has been convicted of any other offence than that with which he is charged: *Charnock v. Merchant*, (1900) 1 Q. B. 474.

11 & 12 Vict.
c. 42.
12 & 13 Vict.
c. 69.
14 & 15 Vict.
c. 93.

11 & 12 Vict.
c. 42.
14 & 15 Vict.
c. 93.

the testimony admitted by virtue of this section and given on behalf of the prosecution is corroborated by some other material evidence in support thereof implicating the accused ; and

- (b) Any child whose evidence is received as aforesaid and who shall wilfully give false evidence shall be liable to be indicted and tried for such offence, and on conviction thereof may be adjudged such punishment as is provided for by section eleven of the Summary Jurisdiction Act, 1879, in the case of juvenile offenders, or in Ireland by section four of the Summary Jurisdiction over Children (Ireland) Act, 1884, in the case of children.

42 & 43 Vict.
c. 49.
47 & 48 Vict.
c. 19.

- (2.) This section shall not apply to Scotland.

16. Where in any proceedings with relation to an offence of cruelty within the meaning of this Act, or any of the offences mentioned in the schedule to this Act, the court is satisfied by the evidence of a registered medical practitioner that the attendance before the court of any child in respect of whom the offence is alleged to have been committed would involve serious danger to its life or health, and is further satisfied that the evidence of the child is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of the child.

Power to
proceed with
case in
absence of
child.

17. Where a person is charged with an offence under this Act, or any of the offences mentioned in the schedule to this Act, in respect of a child who is alleged in the charge or indictment to be under any specified age, and the child appears to the court to be under that age, such child shall for the purposes of this Act be deemed to be under that age, unless the contrary is proved.

Presumption
of age of child.

18.—(1.) Where a person is charged with committing an offence under this Act or any of the offences mentioned in the schedule to this Act in respect of two or more children, the same information or summons may charge the offence in respect of all or any of them but the person charged shall not be liable to a separate penalty for each child unless upon separate informations.

Mode of
charging
offences and
limitation of
time.

(2.) The same information or summons may also charge the offences of assault, ill-treatment, neglect, abandonment, or exposure, together or separately, but when those offences are charged together the person charged shall not be liable to a separate penalty for each.

(3.) A person shall not be summarily convicted of an offence under this Act or of an offence mentioned in the schedule to this Act unless the offence was wholly or partly committed within six months before the information was laid ; but, subject as aforesaid, evidence may be taken of acts constituting, or contributing to constitute, the offence, and committed at any previous time.

(4.) Where an offence under this Act or any offence mentioned in the schedule to this Act charged against any person is a continuous offence, it shall not be necessary to specify in the information, summons, or indictment, the date of the acts constituting the offence.

19. When, in pursuance of this Act, any person is convicted by a court of summary jurisdiction of an offence, and such person did not plead guilty or admit the truth of the information, or when in the case of any application under sections six, seven, or eight of this Act, other than an application to a judge or court of assize, any party thereto thinks himself aggrieved by any order or decision of the court, he may appeal against such a conviction, or order, or decision, in England and Ireland to a court of quarter sessions, and in Scotland to the High Court of Justiciary, in manner provided by the Summary Prosecutions Appeal (Scotland) Act, 1875, or any Act amending the same.

Appeal from
summary
conviction to
quarter
sessions.

38 & 39 Vict.
c. 62.

20.—(1.) Where a misdemeanor under this Act is tried on indictment, the expenses of the prosecution shall be defrayed in like manner as in the case of a felony.

Expenses of
prosecution.

- (2.) This section shall not apply to Scotland.

21. A board of guardians, or in Scotland the parochial board of any

Guardians may
pay costs of
proceedings.

parish or combination, may, out of the funds under their control, pay the reasonable costs and expenses of any proceedings which they have directed to be taken under this Act in regard to the assault, ill-treatment, neglect, abandonment, or exposure of any child, and in the case of a union, shall charge such costs and expenses to the common fund.

Supplemental.

Provision as to
bye-laws.
38 & 39 Vict.
c. 55.

30 & 31 Vict.
c. 101.

41 & 42 Vict.
c. 52.

Provision as to
parents and as
to meaning of
"custody,
charge, or
care."

Right of
parent, &c.
to administer
punishment.
General
definitions.

22. Every bye-law under this Act shall be subject—

(a) In England to section one hundred and eighty-four of the Public Health Act, 1875, as if every local authority in England under this Act were a local authority within the meaning of that section, but with the substitution of Secretary of State for the Local Government Board; and

(b) In Scotland to so much of section sixty-two of the Public Health (Scotland) Act, 1867, as provides for the confirmation of rules and regulations and the proceedings preliminary to confirmation as if such rules and regulations included bye-laws under this Act, and the local authority under this Act were a local authority within the meaning of that section, but with the substitution of the Secretary for Scotland for the Board of Supervision; and

(c) In Ireland to section two hundred and twenty-one of the Public Health (Ireland) Act, 1878, with the substitution of Lord Lieutenant for the Local Government Board.

23.—(1.) The provisions of this Act relating to the parent of a child shall apply to the step-parent of the child and to any person cohabiting with the parent of the child, and the expression "parent" when used in relation to a child includes guardian and every person who is by law liable to maintain the child.

(2.) This Act shall apply in the case of a parent who being without means to maintain a child fails to provide for its maintenance under the Acts relating to the relief of the poor, in like manner as if the parent had otherwise neglected the child.

(3.) For the purposes of this Act—

Any person who is the parent of a child shall be presumed to have the custody of the child; and

Any person to whose charge a child is committed by its parent shall be presumed to have charge of the child; and

Any other person having actual possession or control of a child shall be presumed to have the care of the child.

24. Nothing in this Act shall be construed to take away or affect the right of any parent, teacher, or other person having the lawful control or charge of a child to administer punishment to such child.

25. In this Act unless the context otherwise requires—

The expression "local authority" means, as regards any borough in England, the council of the borough; as regards the city of London, the common council; as regards the county of London, the county council; and as regards any other place in England, the district council, and until a district council is established the urban or rural sanitary authority;

The expression "chief officer of police" means—

in the city of London and the liberties thereof, the commissioner of city police;

in the metropolitan police district, the commissioner of police of the metropolis;

elsewhere in England, the chief constable, or head constable or other officer, by whatever name called, having the chief local command of the police in the police district in reference to which such expression occurs;

The expression "street" includes any highway or other public place, whether a thoroughfare or not;

The expression "place of safety" includes any place certified by the local authority under this Act for the purposes of this Act, and also includes any workhouse or police station, or any hospital surgery, or place of the like kind :

The expression "Industrial Schools Acts" means as regards England and Scotland the Industrial Schools Act, 1866, and the Acts amending the same.

26. In the application of this Act to Scotland, unless the context otherwise requires—

The Secretary for Scotland shall be substituted for a Secretary of State :

The expression "local authority" means as regards any burgh in Scotland, being either a royal burgh or a burgh returning or contributing to return a member to Parliament, the town council ; as regards any police burgh in Scotland, the Commissioners of Police thereof, and as regards any county in Scotland exclusive of any such burgh, the county council :

The expression "chief officer of police" means the chief constable, or head constable, superintendent or inspector, or other officer, by whatever name called, having the chief local command of the police in the police district in reference to which such expression occurs :

The expression "court of summary jurisdiction," the expression "petty sessional court" and the expression "justice of the peace" mean the sheriff or sheriff substitute :

The expression "misdemeanor" means crime and offence :

The expression "manslaughter" means culpable homicide :

The expression "defendant" includes panel, respondent, or person charged :

The expression "enter into a recognisance with or without sureties" means grant a bond of caution :

The expression "workhouse" means poor house.

27. In the application of this Act to Ireland, unless the context otherwise requires—

The Chief Secretary shall be substituted for a Secretary of State :

The expression "local authority" means the sanitary authority within the meaning of the Public Health (Ireland) Act, 1878 :

The expression "chief officer of police" means in the police district of Dublin metropolis the chief commissioner of the police for the said district ; and in any other police district the county inspector of the Royal Irish Constabulary :

The expression "committed for trial" means committed to prison or admitted to bail in manner provided in the Summary Jurisdiction (Ireland) Acts :

The expression "petty sessional court" means a court of summary jurisdiction :

The expression "Industrial Schools Acts" means the Industrial Schools Act (Ireland), 1868, and any Act amending the same.

28.—(1.) This Act may be cited as the Prevention of Cruelty to Children Act, 1894.

(2.) The Prevention of Cruelty to, and Protection of, Children Act, 1889, and the Prevention of Cruelty to Children (Amendment) Act, 1894, are hereby repealed.

(3.) This Act shall come into operation on the twenty-first day of August one thousand eight hundred and ninety-four.

29 & 30 Vict.
c. 118.

Application
of Act to
Scotland.

Application
of Act to
Ireland.

41 & 42 Vict.
c. 52.

31 & 32 Vict.
c. 25.

Short title
and repeal.

52 & 53 Vict.
c. 44.

57 & 58 Vict.
c. 27.

SCHEDULE.

Any offence under sections twenty-seven, fifty-five, or fifty-six of the Offences against the Person Act, 1861, and any offence against a child under the age of sixteen years under sections forty-three or fifty-two of that Act.

2 & 25 Vict.
c. 100.

42 & 43 Vict.
c. 34.

Any offence under the Children's Dangerous Performances Act, 1879.
Any other offence involving bodily injury to a child under the age of sixteen years.

THE QUARRIES ACT, 1894.

57 & 58 VICT. c. 42.

An Act to provide for the better Regulation of Quarries.

[25th August, 1894.]

Application
of Act.

Be it enacted, &c., as follows:

1. This Act shall apply to every place (not being a mine) in which persons work in getting slate, stone, coprolites, or other minerals (*c*) and any part of which is more than twenty feet deep, and every such place is in this Act referred to as a quarry under this Act.

Application to
quarries of
certain
provisions of
35 & 36 Vict.
c. 77.

2.—(1.) The provisions of the Metalliferous Mines Regulation Acts, 1872 and 1875, and the Metalliferous Mines (Isle of Man) Act, 1891, specified in the schedule to this Act, shall, subject to the modifications therein specified, apply in the case of every quarry under this Act in like manner as they apply in the case of a mine.

38 & 39 Vict.
c. 39.
54 & 55 Vict.
c. 47.

(2.) The inspectors under the Metalliferous Mines Regulation Acts, 1872 and 1875, shall be inspectors of the quarries under this Act.

(3.) In the appointment of such inspectors in Wales and Monmouthshire among candidates equally qualified persons having a knowledge of the Welsh language shall be preferred.

Modifications
of application
of Factory
Acts to
quarries.

3. In the application of the Factory and Workshops Act, 1878 to 1891, and of any future Act amending the same (*d*), to quarries under this Act, the following modifications shall be made—

(a) In every such quarry the powers of the inspectors under those Acts shall be transferred to and exercised by the inspectors under the Metalliferous Mines Regulation Acts, 1872 and 1875;

(b) Sections thirty-one and thirty-two of the Factory and Workshop Act, 1878, shall not apply to any such quarry;

(c) Nothing in section fifty-eight of the Factory and Workshop Act, 1878, shall prevent the employment in any such quarry of young persons in three shifts for not more than eight hours each.

Commence-
ment of Act.
Short title.

4. This Act shall come into operation on the first day of January, one thousand eight hundred and ninety-five.

5. This Act may be cited as the Quarries Act, 1894.

SCHEDULE.

PROVISIONS OF METALLIFEROUS MINES ACTS APPLIED TO QUARRIES.

Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77).

Section nine.

Section eleven, with the substitution of the word "explosive" for the word "powder."

Sections fifteen to eighteen.

Sections twenty to twenty-two.

Sections twenty-four to forty.

In section forty-one, the definitions of "owner" and "agent," and

(*c*) These words include gravel and sand: *Scott v. Midland Railway Co.*, (1901) 1 K. B. 317.

(*d*) These Acts were repealed and consolidated with amendments by the Factory and Workshop Act, 1901, *post*, p. 726.

the definition of "court of summary jurisdiction" so far as it relates to Scotland.

Sections forty-two and forty-three.

Metalliferous Mines Regulation Act, 1875 (38 & 39 Vict. c. 39).

Section one, except the proviso.

Metalliferous Mines (Isle of Man) Act, 1891 (54 & 55 Vict. c. 47).

Section one.

THE COAL MINES (CHECK WEIGHER) ACT, 1894.

57 & 58 VICT. C. 52.

An Act to amend the Provisions of the Coal Mines Regulation Act, 1887, with respect to Check Weighers.

[25th August, 1894.]

Be it enacted, &c., as follows :

1. If the owner, agent, or manager of any mine, or any person employed by or acting under the instructions of any such owner, agent, or manager, interferes with the appointment of a check weigher, or refuses to afford proper facilities for the holding of any meeting for the purpose of making such appointment, in any case in which the persons entitled to make the appointment do not possess or are unable to obtain a suitable meeting place, or attempts, whether by threats, bribes, promises, notice of dismissal, or otherwise howsoever, to exercise improper influence in respect of such appointment, or to induce the persons entitled to appoint a check weigher, or any of them, not to re-appoint a check weigher, or to vote for or against any particular person or class of persons in the appointment of a check weigher, such owner, agent, or manager shall be guilty of an offence against the Coal Mines Regulation Act, 1887.

Penalty for interference with office of check-weigher.

50 & 51 Vict. c. 58.

2. This Act may be cited as the Coal Mines (Check Weigher) Act, 1894.

Short title.

THE SHOP HOURS ACT, 1895.

58 VICT. C. 5.

An Act to amend the Shop Hours Act, 1892.

[9th April, 1895.]

Be it enacted, &c., as follows :

1. If any employer fails to keep exhibited the notice required by section four of the Shop Hours Act, 1892, in manner required by that section, he shall be liable to a fine not exceeding forty shillings.

Penalty on failure to comply with 55 & 56 Vict. c. 62, s. 4.

2. This Act may be cited as the Shop Hours Act, 1895, and shall be construed as part of the Shop Hours Act, 1892, and the Shop Hours Acts, 1892 and 1893, and this Act may be cited collectively as the Shop Hours Acts, 1892 to 1895.

Short title and construction.

THE CONCILIATION ACT, 1896.

59 & 60 VICT. C. 30.

An Act to make better Provision for the Prevention and Settlement of Trade Disputes.

[7th August, 1896.]

Be it enacted, &c., as follows :—

1.—(1.) Any board established either before or after the passing of this Act, which is constituted for the purpose of settling disputes between

Registration and powers of conciliation boards.

employers and workmen by conciliation or arbitration, or any association or body authorised by an agreement in writing made between employers and workmen to deal with such disputes (in this Act referred to as a conciliation board), may apply to the Board of Trade for registration under this Act.

(2.) The application must be accompanied by copies of the constitution, byelaws, and regulations of the conciliation board, with such other information as the Board of Trade may reasonably require.

(3.) The Board of Trade shall keep a register of conciliation boards, and enter therein with respect to each registered board its name and principal office, and such other particulars as the Board of Trade may think expedient, and any registered conciliation board shall be entitled to have its name removed from the register on sending to the Board of Trade a written application to that effect.

(4.) Every registered conciliation board shall furnish such returns, reports of its proceedings, and other documents as the Board of Trade may reasonably require.

(5.) The Board of Trade may, on being satisfied that a registered conciliation board has ceased to exist or to act, remove its name from the register.

(6.) Subject to any agreement to the contrary, proceedings for conciliation before a registered conciliation board shall be conducted in accordance with the regulations of the board in that behalf.

Powers of
Board of Trade
as to trade
disputes.

2.—(1.) Where a difference exists or is apprehended between an employer, or any class of employers, and workmen, or between different classes of workmen, the Board of Trade may, if they think fit, exercise all or any of the following powers, namely:—

(a) inquire into the causes and circumstances of the difference :

(b) take such steps as to the Board may seem expedient for the purpose of enabling the parties to the difference to meet together by themselves or their representatives, under the presidency of a chairman mutually agreed upon or nominated by the Board of Trade or by some other person or body, with a view to the amicable settlement of the difference :

(c) on the application of employers or workmen interested, and after taking into consideration the existence and adequacy of means available for conciliation in the district or trade and the circumstances of the case, appoint a person or persons to act as conciliator or as a board of conciliation (c) ;

(d) on the application of both parties to the difference, appoint an arbitrator.

(2.) If any person is appointed to act as conciliator, he shall inquire into the causes and circumstances of the difference by communication with the parties, and otherwise shall endeavour to bring about a settlement of the difference, and shall report his proceedings to the Board of Trade.

(3.) If a settlement of the difference is effected either by conciliation or by arbitration, a memorandum of the terms thereof shall be drawn up and signed by the parties or their representatives, and a copy thereof shall be delivered to and kept by the Board of Trade.

Exclusion of
52 & 53 Vict.
c. 49.

3. The Arbitration Act, 1889, shall not apply to the settlement by arbitration of any difference or dispute to which this Act applies, but any such arbitration proceedings shall be conducted in accordance with

(c) In the third Report of the Board of Trade of Proceedings under this Act, published in October, 1901, it is stated that it is the usual practice for the Board of Trade to pay the fees and travelling expenses of arbitrators and conciliators appointed by them, and that it is customary for the parties to the dispute to share the local expenses, such as those connected with the hire of a room for meetings and conferences and the payment of a shorthand writer in cases in which they consider shorthand notes necessary.

such of the provisions of the said Act, or such of the regulations of any conciliation board, or under such other rules or regulations, as may be mutually agreed upon by the parties to the difference or dispute.

4. If it appears to the Board of Trade that in any district or trade adequate means do not exist for having disputes submitted to a conciliation board for the district or trade, they may appoint any person or persons to inquire into the conditions of the district or trade, and to confer with employers and employed, and, if the Board of Trade think fit, with any local authority or body, as to the expediency of establishing a conciliation board for the district or trade.

5. The Board of Trade shall from time to time present to Parliament a report of their proceedings under this Act.

6. The expenses incurred by the Board of Trade in the execution of this Act shall be defrayed out of moneys provided by Parliament.

7. The Masters and Workmen Arbitration Act, 1824, and the Councils of Conciliation Act, 1867, and the Arbitration (Masters and Workmen) Act, 1872, are hereby repealed.

8. This Act may be cited as the Conciliation Act, 1896.

Power for Board of Trade to aid in establishing conciliation boards.

Report to Parliament.

Expenses.

Repeal
5 Geo. 4. c. 96,
30 & 31 Vict.
c. 165,
35 & 36 Vict.
c. 46.

Short title.

THE COAL MINES REGULATION ACT, 1896.

59 & 60 VICT. c. 43.

An Act to amend the Coal Mines Regulation Act, 1887.

[14th August, 1896.]

Be it enacted, &c., as follows:—

1.—(1.) The power to propose, amend, and modify special rules for a mine under the Coal Mines Regulation Act, 1887 (in this Act referred to as the principal Act), shall include powers with respect to any of the following matters:—

- (a) the nature and description of the lights or lamps to be used in the mine, and their custody and the mode of using and trimming them; and
- (b) the description of explosives to be used in the mine, the mode of using and of storing such explosives, and of making and stemming holes, and the times at which and the manner in which shots are to be fired in the mine; and
- (c) the number or class of persons, if any, to be permitted to remain in the mine or any part thereof whilst shots are being fired; and
- (d) the watering or efficient damping of the mine or any ways or places therein; and
- (e) generally the precautions to be adopted for the prevention of accidents from inflammable gas and coal dust.

(2.) While any special rules made under this section are in force in any mine, any general rule contained in section forty-nine of the principal Act, and any special rule established under the principal Act, shall, if and so far as it is inconsistent with any special rules made under this section, be suspended in relation to that mine.

2. Where any matter in difference is referred to arbitration under the principal Act, a majority of the workmen employed in the mine to which the arbitration relates may, on giving such security, if any, as may appear to the arbitrators or umpire sufficient to provide for the costs occasioned by such representation, appoint any person to represent the workmen, or any class of them, on the arbitration, and any person so appointed shall be entitled to attend and take part in the proceedings of the arbitration to such extent and in such manner as the arbitrators or umpire may direct, and be subject to the same liability with respect to costs so occasioned as if he were a party to the arbitration.

Special rules.

50 & 51 Vict.
c. 58.

Representa-
tion of
workmen on
arbitration.

Plan of mine
in working.

3. The plan required to be kept in pursuance of section thirty-four of the principal Act shall show the position of the workings therein mentioned with regard to the surface, and the position, extension, and direction of every known fault or dislocation of the seam with its vertical throw.

Plan of
abandoned
mine.

4.—(1.) For sub-sections (1) and (2) of section thirty-eight of the principal Act shall be substituted the following sub-sections:—

" (1.) Where any mine or seam is abandoned, the person who is owner of the mine or seam at the time of its abandonment shall, within three months after the abandonment, send to a Secretary of State:

(i.) An accurate plan of the mine or seam, being either the original working plan or an accurate copy thereof made by a competent draftsman, and showing—

(a) the boundaries of the workings of the mine or seam, including not only the working faces but also all headings in advance thereof, up to the time of the abandonment;

(b) the pillars of coal or other mineral remaining unworked;

(c) the position, direction, and extent of every known fault or dislocation of the seam with its vertical throw;

(d) the position of the workings with regard to the surface boundary;

(e) the general direction and rate of dip of the strata; and

(f) a statement of the depth of the shaft from the surface to the seam abandoned; and

(ii.) A section of the strata sunk through, or, if that is not reasonably practicable, a statement of the depth of the shaft with a section of the seam.

" Every such plan must be on a scale of not less than that of the ordnance survey of twenty-five inches to the mile, or on the same scale as the plan used at the mine at the time of its abandonment, and its accuracy must be certified, so far as is reasonably practicable, by a surveyor or other person approved in that behalf by an inspector of mines.

" (2.) The plan and section shall be preserved under the care of the Secretary of State; but no person, except an inspector under this Act, shall be entitled without the consent of the owner of the mine or seam, or the licence of a Secretary of State, to see the plan when so sent until after the expiration of ten years from the time of the abandonment. Provided that such licence shall not be granted unless the Secretary of State is satisfied that the inspection of such plan is necessary in the interests of safety."

(2.) The High Court, or, in Scotland, the Court of Session, may, on application by or on behalf of the Secretary of State, make an order requiring any person who has, for the time being the custody or possession of any plan or section of an abandoned mine or seam to produce it to the Secretary of State for the purpose of inspection or copying.

Amendment of
general rules
as to lamps,
inspection and
tamping.

5.—(1.) The inspection before the commencement of work required by Rule 4 (1.) contained in section forty-nine of the principal Act, shall extend to all working places in which work is temporarily stopped within any ventilating district in which the men have to work.

(2.) A safety lamp shall not be used in any mine or part of a mine by any person employed therein unless it is provided by the owner of the mine, and no portion of any safety lamp shall be removed by any person from the mine while the lamp is in ordinary use.

(3.) In Rule 12 of the general rules contained in section forty-nine

of the principal Act, for the words "nor shall coal or coal dust be used for tamping" shall be substituted the words "and only clay or other non-inflammable substances shall be used for stemming, and shall be provided by the owner of the mine."

6. A Secretary of State on being satisfied that any explosive is or is likely to become dangerous, may, by order, of which notice shall be given (*f*) in such manner as he may direct, prohibit the use thereof in any mine, or in any class of mines, either absolutely or subject to conditions, and the provisions of the principal Act as to contraventions of general rules shall apply to contraventions of any such prohibitions.

7. This Act may be cited as the Coal Mines Regulation Act, 1896, and the principal Act and the Coal Mines (Check Weighers) Act, 1894, and this Act may be cited collectively as the Coal Mines Regulation Acts, 1887 to 1896.

Provision as to explosives.

Short title.

57 & 58 Vict.
c. 52.

THE TRUCK ACT, 1896.

59 & 60 VICT. C. 44.

An Act to amend the Truck Acts.

[14th August, 1896.]

Be it enacted, &c., as follows :

1.—(1.) An employer shall not make any contract (*g*) with any workman for any deduction from the sum contracted to be paid by the employer to the workman, or for any payment to the employer by the workman, for or in respect of any fine, unless—

Deductions or payments in respect of fines.

- (a) the terms of the contract are contained in a notice kept constantly affixed at such place or places open to the workmen and in such a position that it may be easily seen, read, and copied by any person whom it affects; or the contract is in writing, signed by the workman; and
- (b) the contract specifies (*h*) the acts or omissions in respect of which the fine may be imposed, and the amount of the fine or the particulars from which that amount may be ascertained; and
- (c) the fine imposed under the contract is in respect of some act or omission which causes or is likely to cause damage or loss to the employer, or interruption or hindrance to his business; and
- (d) the amount of the fine is fair and reasonable having regard to all the circumstances of the case.

(2.) An employer shall not make any such deduction or receive any such payment, unless—

- (a) the deduction or payment is made in pursuance of, or in accordance with, such a contract as aforesaid; and

(*f*) This is not a condition precedent to the order coming into force: *Jones v. Robson*, (1901) 1 K. B. 673.

(*g*) A dispute in which an employer claims from a workman a penalty payable under the contract of employment for absence without leave may be decided by justices under sect. 4 of the Employers and Workmen Act, 1875, *ante*, p. 578: *Burton Lime Firms Co. v. Howe*, (1900) 2 Q. B. 232.

(*h*) A rule in a factory that "all workers shall observe good order and decorum while in the factory" was held sufficiently specific in *Squire v. Bayer*, (1901) 2 K. B. 299.

- (b) particulars in writing showing the acts or omissions in respect of which the fine is imposed and the amount thereof are supplied to the workman on each occasion when a deduction or payment is made.

(3.) This section shall apply to the case of a shop assistant in like manner as it applies to the case of a workman.

Deductions or payments in respect of damaged goods.

2.—(1.) An employer shall not make any contract with any workman for any deduction from the sum contracted to be paid by the employer to the workman, or for any payment to the employer by the workman for or in respect of bad or negligent work or injury to the materials or other property of the employer, unless—

- (a) the terms of the contract are contained in a notice kept constantly affixed at such place or places open to the workmen and in such a position that it may be easily seen, read, and copied by any person whom it affects; or the contract is in writing, signed by the workman; and
- (b) the deduction or payment to be made under the contract does not exceed the actual or estimated damage or loss occasioned to the employer by the act or omission of the workman, or of some person over whom he has control, or for whom he has by the contract agreed to be responsible; and
- (c) the amount of the deduction or payment is fair and reasonable, having regard to all the circumstances of the case.

(2.) An employer shall not make any such deduction or receive any such payment unless—

- (a) the deduction or payment is made in pursuance of, or in accordance with, such a contract as aforesaid; and
- (b) particulars in writing showing the acts or omissions in respect of which the deduction or payment is made and the amount thereof are supplied to the workman on each occasion when a deduction or payment is made.

Deductions or payments in respect of materials.

3.—(1.) An employer shall not make any contract with any workman for any deduction from the sum contracted to be paid by the employer to the workman, or for any payment to the employer by the workman for, or in respect of, the use or supply of materials, tools or machines, standing room, light, heat, or for or in respect of any other thing to be done or provided by the employer in relation to the work or labour of the workman unless—

- (a) the terms of the contract are contained in a notice kept constantly affixed at such place or places open to workmen, and in such a position that it may be easily seen, read, and copied by any person whom it affects; or the contract is in writing, signed by the workman; and
- (b) the sum to be paid or deducted under the contract in respect of materials, tools or machines, standing room, light, heat, or any other thing, does not exceed, in the case of materials or tools supplied to the workman, the actual or estimated cost thereof to the employer, or in the case of the use of machinery, light, heat, or any other thing in this section mentioned, a fair and reasonable rent or charge, having regard to all the circumstances of the case.

(2.) An employer shall not make any such deduction or receive any such payment unless—

- (a) the deduction or payment is made in pursuance of, and in accordance with, such a contract as aforesaid; and
- (b) particulars in writing showing the things in respect of which the deduction or payment is made and the amount thereof are supplied to the workman on each occasion when a deduction or payment is made.

Penalty.

4. If any employer enters into any contract contrary to this Act, or makes any deduction or receives any payment contrary to this Act, he

shall be guilty of an offence against the Truck Act, 1831, and shall be liable to the penalties imposed by section nine of that Act as if the offence were an offence in that section mentioned.

5. Any workman or shop assistant may recover any sum deducted by or paid to his employer contrary to this Act, provided that proceedings for such recovery are commenced within six months from the date of the deduction or payment sought to be recovered, and that where he has consented to or acquiesced in any such deduction or payment, he shall only recover the excess which has been deducted or paid over the amount, if any, which the court may find to have been fair and reasonable, having regard to all the circumstances of the case.

6.—(1.) Every employer who has made any contract purporting or intending to operate as a contract under this Act, shall, on demand in writing by one of her Majesty's inspectors of factories or of mines, produce the contract or a true copy thereof at any convenient time and place to be named by the inspector, and the inspector shall be at liberty to take a copy of the same or of any part thereof, and the employer of any workman or shop assistant who is party to any such contract shall at the time of making the contract give the workman or shop assistant a copy of the contract or of the notice containing its terms.

(2.) A workman or shop assistant who is party to any such contract shall be entitled, on request, to obtain from his employer free of charge a copy of the contract or of the notice containing its terms.

(3.) Every employer who has made any contract purporting or intending to operate as a contract under section one of this Act shall keep a register of deductions or payments, and shall enter therein every deduction or payment for or in respect of any fine purporting to be made under any such contract, specifying the amount and the nature of the act or omission in respect of which the fine was imposed, and this register shall be at all times open to inspection by one of her Majesty's inspectors of factories or of mines.

(4.) If any person fails to comply with this section he shall be liable on summary conviction to a fine not exceeding forty shillings.

7. A contract entered into under the provisions of this Act shall not be liable to stamp duty.

8. Nothing in this Act shall make lawful any contract or payment which is illegal under the Truck Acts, 1831 and 1887, or under the Hosiery Manufacture (Wages) Act, 1874, or affect the provisions of the Coal Mines Regulation Act, 1887, or any amending Act, with respect to persons employed in mines and paid according to weight, or make lawful any deduction from payments made to those persons.

9.—(1.) The Secretary of State, if satisfied that the provisions of this Act are unnecessary for the protection of the workmen employed in any trade or business, or in any branch or department of any trade or business, either generally or within any specified area, may by order under his hand grant an exemption (i) from those provisions in respect of the persons engaged in that trade, business, branch or department, either generally or within that area.

(2.) The Secretary of State may at any time amend or revoke any such order.

(3.) Every order made under this section shall be laid as soon as may be before both Houses of Parliament, and if either House within the next forty days after the order has been so laid before that House resolves that the order ought to be annulled, the order shall, after the date of that

1 & 2 Will. 4,
c. 37.

Recovery of
payments or
deductions.

Production of
contract.

Exemption of
contract from
stamp duty.

Saving as to
contracts and
payments
illegal under
existing Acts.
1 & 2 Will. 4,
c. 37.
50 & 51 Vict.
c. 46.
37 & 38 Vict.
c. 48.
50 & 51 Vict.
c. 58.

Power to
exempt from
provisions
of Act.

(i) Exemptions were granted under this section on March 3rd, 1897, in favour of persons engaged in weaving cotton in Lancashire, Cheshire, Derbyshire, and the West Riding of Yorkshire; and on July 30th, 1897, in favour of persons engaged in iron ore and ironstone mines and limestone quarries in districts of Lancashire, Cumberland, and Yorkshire.

Duties of
inspectors.
50 & 51 Vict.
c. 46.

Commence-
ment.

Short title and
construction.

resolution, be of no effect, without prejudice to the validity of anything done in the meantime under the order or to the making of a new order.

10. Sub-section two of section thirteen of the Truck Amendment Act, 1887 (which relates to the duty of inspectors), shall apply in the case of a laundry, and in the case of any place where work is given out by the occupier of a factory or workshop, or by a contractor, or sub-contractor, in like manner as it applies in the case of a factory.

11. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-seven.

12. This Act may be cited as the Truck Act, 1896; and the Truck Acts, 1831 and 1887, and this Act shall be construed together as one Act and may be cited collectively as the Truck Acts, 1831 to 1896.

THE WORKMEN'S COMPENSATION ACT, 1897.

60 & 61 VICT. C. 37.

An Act to amend the Law with respect to Compensation to Workmen for accidental Injuries suffered in the course of their Employment.
[6th August, 1897.]

Be it enacted, &c., as follows:—

1.—(1.) If in any employment to which this Act applies (*j*) personal injury (*k*) by accident (*l*) arising out of and in the course of (*m*) the

Liability of
certain
employers to
workmen for
injuries.

(*j*) See sect. 7.

(*k*) See *Dulieu v. White*, (1901) 2 K. B. 669, which was an action for damages in respect of a nervous shock, the result of fright at an accident caused by the negligence of the defendant's servant.

(*l*) The word "accident" involves the idea of something fortuitous and unexpected, and therefore it was held that the death of a workman from disease accelerated by a strain in doing his work was not within the Act: *Hensley v. White*, (1900) 1 Q. B. 481; *Roper v. Greenwood*, 83 L. T. Rep. 471. In the following cases it was held that there was evidence in support of the judge's finding that the injury was caused by accident: *Walker v. Lilleshall Colliery Co.*, (1900) 1 Q. B. 488 (working with blistered finger); *Lloyd v. Sugg & Co.*, (1900) 1 Q. B. 486 (a weak hand injured by a jar through a mis-hit on an anvil); *Tummins v. Leeds Forge Co.*, 83 L. T. Rep. 120 (rupture in lifting planks); *Thompson v. Ashington Coal Co.*, 84 L. T. Rep. 412 (blood-poisoning by a piece of coal getting into miner's knee); *Boardman v. Scott*, (1902) 1 K. B. 43 (fibres of muscles torn in moving heavy weight).

(*m*) Where injury was caused to a ticket collector who, solely for his own pleasure, got on to the footboard of a moving train, it was held that the accident was not one "arising out of," though it may have been "in the course of," his employment: *Smith v. Lancashire and Yorkshire Railway Co.*, (1899) 1 Q. B. 141. A boy employed solely in manual labour meddled with a machine which he had been told not to touch and was injured: held, that the accident was not in the course of his employment: *Lowe v. Pearson*, (1899) 1 Q. B. 261. But disobedience to orders, causing injury, will not necessarily in every case deprive the workman of a claim to compensation: *Whitehead v. Reader*, (1901) 2 K. B. 48 (carpenter, sharpening his tools, adjusting driving band of machinery turning the grindstone). And a servant may be justified in doing an act outside the scope of his regular employment in order to prevent sudden damage to his master's property: *Rees v. Thomas*, (1899) 1 Q. B. 1915. A workman injured on his way to his employer's premises is not within this section: *Holness v. McKay*, (1899) 2 Q. B. 319; unless the terms of his employment are such as to cover the time occupied in going to his work: *Holmes v. Great Northern Railway Co.*, (1900) 2 Q. B. 409.

employment is caused to a workman, his employer shall, subject as herein-after mentioned, be liable to pay compensation in accordance with the First Schedule to this Act (*n*).

(2.) Provided that :—

(a) The employer shall not be liable under this Act in respect of any injury which does not disable (*o*) the workman for a period of at least two weeks from earning full wages at the work at which he was employed ;

(b) When the injury was caused by the personal negligence or wilful act of the employer, or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this Act, or take the same proceedings as were open to him before the commencement of this Act ; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid ;

(c) If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall be disallowed (*p*).

(3.) If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether the employment is one to which this Act applies), or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the First Schedule to this Act, be settled by arbitration, in accordance with the Second Schedule to this Act (*q*).

(4.) If, within the time herein-after in this Act limited for taking proceedings, an action is brought to recover damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed ; but the court in which the action is tried (*r*) shall, if the plaintiff shall so choose, proceed to assess such compensation, and shall be at liberty to deduct from such compensation all the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this Act.

(*n*) The first schedule provides modes of assessing the amount of compensation, but the general effect of this section is not cut down by the fact that in any particular case none of the modes of assessing compensation which are provided by the schedule are exactly applicable : *Lysons v. Knowles*, (1901) A. C. 79.

(*o*) Physically disable : *Chandler v. Smith*, (1899) 2 Q. B. 506.

(*p*) In *Lewis v. Great Western Railway Co.*, 3 Q. B. D. 195, Bramwell, L. J., said that "wilful misconduct" means misconduct to which the will is a party, something opposed to accident or negligence ; the misconduct, not the conduct, must be wilful. It is a question of fact, whether a workman has been guilty of serious and wilful misconduct : *John v. Albion Coal Co.*, 18 Times L. Rep. 27 : *Reeks v. Kynoch*, 50 W. R. 113.

(*q*) The existence of one of the questions here mentioned is a condition precedent to the jurisdiction of the county court judge : *Field v. Longden*, (1902) 1 K. B. 47.

(*r*) The plaintiff must apply then and there to the judge trying the action, if he wishes compensation to be assessed : *Edwards v. Godfrey*, (1899) 2 Q. B. 333. The costs of the action and of the arbitration are in the discretion of the judge : *Cattemole v. Atlantic Transport Co.*, (1902) 1 K. B. 204.

In any proceeding under this sub-section, when the court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this Act.

(5.) Nothing in this Act shall affect any proceeding for a fine under the enactments relating to mines or factories, or the application of any such fine, but if any such fine, or any part thereof, has been applied for the benefit of the person injured, the amount so applied shall be taken into account in estimating the compensation under this Act.

Time for
taking
proceedings.

2.—(1.) Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident (*s*) has been given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation (*t*) with respect to such accident has been made within six months (*u*) from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death. Provided always that the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings, if it is found in the proceedings for settling the claim that the employer is not prejudiced in his defence by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake or other reasonable cause.

(2.) Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

(3.) The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

(4.) The notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business, and if served by post shall be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post, and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered.

(5.) Where the employer is a body of persons corporate or unincorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to the employer at, the office, or, if there be more than one office, any one of the offices of such body.

Contracting
out.

3.—(1.) If the Registrar of Friendly Societies, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, is on the whole not less favourable to the general body of workmen and their dependants than the provisions of this Act, the employer may, until the certificate is revoked, contract with any of those workmen that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid,

(s) See par. 3 of schedule I., *post*, p. 668.

(t) A written notice served on the employer to the effect that compensation is claimed in respect of a certain accident is a claim for compensation within this section: *Powell v. Man Colliery Co.*, (1900) A. C. 366.

(u) But an employer may estop himself, as by an admission of liability, from setting up as a defence that no claim has been made within the six months: *Wright v. John Baguall & Sons*, [1900] 2 Q. B. 240; *Reidull v. Hill's Dry Dock Co.*, (1900) 2 Q. B. 245.

this Act shall apply notwithstanding any contract to the contrary made after the commencement of this Act.

(2.) The registrar may give a certificate to expire at the end of a limited period not less than five years.

(3.) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring.

(4.) If complaint is made to the Registrar of Friendly Societies by or on behalf of the workmen of any employer that the provisions of any scheme are no longer on the whole so favourable to the general body of workmen of such employer and their dependants as the provisions of this Act, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the registrar shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

(5.) When a certificate is revoked or expires any moneys or securities held for the purpose of the scheme shall be distributed as may be arranged between the employer and workmen, or as may be determined by the Registrar of Friendly Societies in the event of a difference of opinion.

(6.) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the Registrar of Friendly Societies.

(7.) The Chief Registrar of Friendly Societies shall include in his annual report the particulars of the proceedings of the registrar under this Act.

4. Where, in an employment to which this Act applies, the undertakers as herein-after defined contract with any person for the execution by or under such contractor of any work, and the undertakers would, if such work were executed by workmen immediately employed by them, be liable to pay compensation under this Act to those workmen in respect of any accident arising out of and in the course of their employment, the undertakers shall be liable to pay to any workman employed in the execution of the work any compensation which is payable to the workman (whether under this Act or in respect of personal negligence or wilful act independently of this Act) by such contractor, or would be so payable if such contractor were an employer to whom this Act applies.

Provided that the undertakers shall be entitled to be indemnified (v) by any other person who would have been liable independently of this section.

This section shall not apply to any contract with any person for the execution by or under such contractor of any work which is merely ancillary (w) or incidental to, and is no part of, or process in, the trade or business carried on by such undertakers respectively.

5.—(1.) Where any employer becomes liable under this Act to pay compensation in respect of any accident, and is entitled to any sum from insurers in respect of the amount due to a workman under such

Sub-con-
tracting.

Compensation
to workmen in
case of
bankruptcy
of employer.

(v) See rules 19 to 23 of the Workmen's Compensation Rules, 1898, *post*.

(w) Repairing a railway station is merely ancillary, &c., to the business of a railway company: *Pearce v. London and South Western Railway Co.*, (1900) 2 Q. B. 100. Repairing a steam engine belonging to a cotton spinning factory is merely ancillary, &c., to the business of cotton spinning: *Wrigley v. Bagley*, (1901) 1 K. B. 780. The erection of an iron roof on a new building was held merely ancillary to the business of the defendant, a builder, in a case where the fact was that he did not in his business habitually undertake the erection of iron roofs: *Bush v. Haaves*, (1902) 1 K. B. 216; but the demolition of a building by a builder who in the usual course of business was in the habit of undertaking such work, was held not to be within this proviso: *Knigh v. Cubitt*, (1902) 1 K. B. 31.

liability, then in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or if the employer is a company of the company having commenced to be wound up, such workman shall have a first charge upon the sum aforesaid for the amount so due, and the judge of the county court may direct the insurers to pay such a sum into the Post Office Savings Bank in the name of the registrar of such court, and order the same to be invested or applied in accordance with the provisions of the First Schedule hereto with reference to the investment in the Post Office Savings Bank of any sum allotted as compensation, and those provisions shall apply accordingly (x).

(2.) In the application of this section to Scotland, the words "have a first charge upon" shall mean "be preferentially entitled to."

Recovery of
damages
from stranger.

6. Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the workman may, at his option, proceed, either at law against that person to recover damages, or against his employer for compensation under this Act, but not against both, and if compensation be paid under this Act, the employer shall be entitled to be indemnified by the said other person.

Application
of Act and
definitions.

7.—(1.) This Act shall apply only (y) to employment by the undertakers as herein-after defined, on (z) or in or about (a) a railway, factory, mine, quarry, or engineering work, and to employment by the undertakers as herein-after defined on in or about any building which exceeds thirty feet in height (b), and is either being constructed (c) or

(x) No appeal to the Court of Appeal will lie from an order of the county court judge under this section: *Leech v. Life and Health Assurance Association*, (1901) 1 K. B. 707.

(y) Extended to workmen in agriculture by the Workmen's Compensation Act, 1900, *post*, p. 725.

(z) Employment by the undertakers on a factory means employment by them on their own factory: *Francis v. Turner Brothers*, (1900) 1 Q. B. 478.

(a) "About a factory" means more than merely about the business of a factory, and implies some physical propinquity to a locality, the question in each case whether the employment has been shown to be "about" a railway, &c., being one of fact: *Powell v. Brown*, (1899) 1 Q. B. 157; *Fenn v. Muller*, (1900) 1 Q. B. 788. Employments at a distance of one-and-a-half miles of a locality have been held not to be "about" it: *Lowth v. Ibbotson*, (1899) 1 Q. B. 1003; *Chambers v. Whitehaven Harbour Commissioners*, (1899) 2 Q. B. 132.

(b) Thirty feet at the time of the accident: *Billings v. Holloway*, (1899) 1 Q. B. 70. The mode of measurement depends on the facts of each particular case. It may be from below the ground level, even from the base of an unfinished building before its footings are filled in: *McGrath v. Neill*, (1902) 1 K. B. 241; up to the roof ridge: *Hoddinott v. Newton Chambers & Co.*, (1899) 1 Q. B. 1018. A building demolished to within eleven feet of the ground, with the exception of a party wall which was left over 30 feet in height, has been held within this section: *Knight v. Cobitt*, (1902) 1 K. B. 31. But a building less than this height is not brought within the section merely by having internal communication with an adjoining house, the two buildings having been used together for carrying on one business: *Rixson v. Pritchard*, (1900) 1 Q. B. 800.

(c) Construction includes a substantial alteration of a building already completed and in use: *Hoddinott v. Newton Chambers & Co.*, (1901) A. C. 49; in which case Lord Macnaghten said that the three operations, construction, repair, and demolition, cover every varying phase in the life of a building from its beginning to its end. It includes also the removal of the scaffolding from a new building: *Frid v. London*, 82 L. T. Rep. 193.

repaired (*d*) by means of a scaffolding (*e*), or being demolished, or on which machinery driven by steam, water, or other mechanical power, is being used for the purpose of the construction, repair, and demolition thereof (*f*).

(2.) In this Act—

- “Railway” means the railway of any railway company to which the Regulation of Railways Act, 1873, applies, and includes a light railway made under the Light Railways Act, 1896; and “railway” and “railway company” have the same meaning as in the said Acts of 1873 and 1896 (*g*): 36 & 37 Vict. c. 48.
59 & 60 Vict. c. 48.
- “Factory” has the same meaning as in the Factory and Workshop Acts, 1878 to 1891, and also includes any dock, wharf, quay, warehouse, machinery, or plant, to which any provision of the Factory Acts is applied by the Factory and Workshop Act, 1895, and every laundry worked by steam, water, or other mechanical power (*h*): 58 & 59 Vict. c. 37.
- “Mine” means a mine to which the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, applies (*i*): 50 & 51 Vict. c. 58.
- “Quarry” means a quarry under the Quarries Act, 1894 (*j*): 35 & 36 Vict. c. 77.
- “Engineering work” means any work of construction or alteration or 57 & 58 Vict. c. 42.

(*d*) Repair includes painting and whitewashing, when done for the protection and maintenance of the building: *Dredge v. Conway Jones & Co.*, (1901) 2 K. B. 42.

(*e*) Whether any particular arrangement of things is “a scaffolding” is a mixed question of law and fact. Scaffolding may be inside or outside the building. It need bear no relation to the height of the building, nor be in any way connected with the accident for which compensation is claimed. It may therefore include a staging of trestles and planks inside a room: *Hoddinott v. Newton Chambers & Co.*, (1901) A. C. 49; or a crawling-board used by workmen for standing on while working on a roof: *Veazey v. Chattle*, 71 L. J. K. B. 252. In *Wood v. Walsh*, (1899) 1 Q. B. 1009; in *Ferguson v. Green*, (1901) 1 K. B. 25; and in *Maunder v. Brook*, (1900) 1 Q. B. 575, the decision of the county court judge upon the question whether a particular arrangement was “a scaffolding” was affirmed as being one of fact merely and there being some evidence on which his finding could be justified.

(*f*) A building need not exceed thirty feet in height to be within the words of this last clause: *Mellor v. Tomkinson*, (1899) 1 Q. B. 374. See note (*l*) to definition of “engineering work,” *post*.

(*g*) By sect. 3 of the Regulation of Railways Act, 1873, “the term railway company includes any person being the owner or lessee of or working any railway in the United Kingdom constructed or carried on under the powers of any Act of Parliament;” and “the term railway includes every station, siding, wharf or dock of or belonging to such railway and used for the purposes of public traffic.” A railway refreshment room has been held not to come within this definition: *Milner v. Great Northern Railway Co.*, (1900) 1 Q. B. 795.

(*h*) The Factory and Workshop Acts here mentioned were all repealed by the Factory and Workshop Act, 1901, *post*, p. 726. See the title to that Act, and the note appended thereto. Sect. 149 of that Act, *post*, p. 778, corresponding to sect. 93 of the Factory and Workshop Act, 1878, contains a definition of the factories and workshops to which the Act applies. Sect. 104, *post*, p. 762, corresponding to sect. 23 of the Factory and Workshop Act, 1895, deals with the “dock, wharf, quay, warehouse, machinery or plant” here mentioned. The reference to these six things is all governed by the words, “to which any provision of the Factory Acts is applied”: *Hall v. Snowden*, (1899) 2 Q. B. 136. “Mechanical power” does not include hand power; see the definition of “engineering work” below.

(*i*) See sect. 75 of the Coal Mines Act, 1887, *ante*, p. 630, and sect. 41 of the Metalliferous Mines Act, 1872, *ante*, p. 568.

(*j*) See sect. 1 of that Act, *ante*, p. 652.

repair of a railroad (*k*), harbour, dock, canal, or sewer, and includes any other work for the construction, alteration, or repair of which machinery driven by steam, water, or other mechanical power is used (*l*):

"Undertakers" in the case of a railway means the railway company; in the case of a factory, quarry, or laundry means the occupier thereof within the meaning of the Factory and Workshop Acts, 1878 to 1895 (*m*); in the case of a mine means the owner thereof within the meaning of the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, as the case may be (*n*), and in the case of an engineering work means the person undertaking the construction, alteration, or repair; and in the case of a building (*o*) means the persons undertaking the construction, repair, or demolition:

"Employer" includes any body of persons corporate or unincorporate and the legal personal representative of a deceased employer:

"Workman" includes every person who is engaged in an employment to which this Act applies, whether by way of manual labour or otherwise, and whether his agreement is one of service or apprenticeship or otherwise, and is expressed or implied, is oral or in writing. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependants, or other person to whom compensation is payable (*p*):

"Dependants" means—

(a) in England and Ireland, such members of the workman's family specified in the Fatal Accidents Act, 1846, as were wholly or in part dependent (*q*) upon the earnings of the workman at the time of his death; and

(b) in Scotland, such of the persons entitled according to the law of Scotland to sue the employer for damages or solatium in respect of the death of the workman, as were wholly or in part dependent upon the earnings of the workman at the time of his death.

(3.) A workman employed in a factory which is a shipbuilding yard shall not be excluded from this Act by reason only that the accident

(*k*) Construction of a signal-box on a new line of railway: *Fullick v. Evans*, 84 L. T. Rep. 413.

(*l*) This does not include machinery worked by hand power: *Wrigley v. Bagley*, (1901) 1 K. B. 780; *Wilmott v. Paton*, (1902) 1 K. B. 237.

(*m*) See note *h*, *supra*. No definition of "occupier" was contained in these Acts, nor is there any in the Factory and Workshop Act, 1901. Ship-owners unloading a ship on to a quay were held to be "occupiers" of the part of the quay they were using: *Merrill v. Wilson*, (1901) 1 K. B. 35.

(*n*) See note *h*, *supra*.

(*o*) A person taking a sub-contract for the construction of part of a building is not an undertaker of the building: *Mason v. Dean*, (1900) 1 Q. B. 770; *Cass v. Butler*, (1900) 1 Q. B. 777; *Percival v. Garner*, (1900) 2 Q. B. 406.

(*p*) Such persons may apply for compensation though an award has been already made and a weekly sum paid as compensation for the injury to the workman himself: *O'Keefe v. Lovatt*, 18 Times L. Rep. 57.

(*q*) *Simmons v. White*, (1899) 1 Q. B. 1005; *Main Colliery Co. v. Davies*, (1900) A. C. 358. The fact that the alleged dependant could maintain himself without the help of the deceased does not of necessity prevent him from being a "dependant": *Howells v. Fyrian*, 85 L. T. Rep. 529; *Bevan v. Crawshaw*, (1902) 1 K. B. 25. The personal representative of a deceased dependant of a deceased workman cannot commence proceedings to recover compensation which the dependant, if alive, could have claimed: *O'Donovan v. Cameron*, (1901) 2 Ir. R. 633.

arose outside the yard in the course of his work upon a vessel in any dock, river, or tidal water near the yard (*r*).

8.—(1.) This Act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to any employment by or under the Crown to which this Act would apply if the employer were a private person.

Application to workmen in employment of Crown.

(2.) The Treasury may, by warrant laid before Parliament, modify for the purposes of this Act their warrant made under section one of the Superannuation Act, 1887, and notwithstanding anything in that Act, or any such warrant, may frame a scheme with a view to its being certified by the Registrar of Friendly Societies under this Act.

50 & 51 Vict. c. 67.

9. Any contract existing at the commencement of this Act, whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment, shall not, for the purposes of this Act, be deemed to continue after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the commencement of this Act.

Provision as to existing contracts.

10.—(1.) This Act shall come into operation on the first day of July one thousand eight hundred and ninety-eight.

Commencement of Act and short title.

(2.) This Act may be cited as the Workmen's Compensation Act, 1897.

SCHEDULES.

FIRST SCHEDULE.

SCALE AND CONDITIONS OF COMPENSATION.

Scale.

(1.) The amount of compensation under this Act shall be—

(a) where death results from the injury—

(i) if the workman leaves any dependants wholly dependent (*s*) upon his earnings at the time of his death, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of one hundred and fifty pounds, whichever of those sums is the larger, but not exceeding in any case three hundred pounds, provided that the amount of any weekly payments made under this Act shall be deducted from such sum, and if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be 156 times his average weekly earnings during the period of his actual employment under the said employer (*t*):

(v) A shipbuilding yard, as defined in par. 25 of the sixth schedule to the Factory and Workshop Act, 1901, *post*, p. 792, is a non-textile factory or workshop.

(s) *I.e.*, at the moment of the workman's death, excluding any property that may come to the dependant in consequence of, or after, the death: *Pryce v. Penikyber Colliery Co.*, (1902) 1 K. B. 221.

(t) The use of the word "average" does not exclude from the benefits of the Act a workman employed for less than two weeks: *Lysons v. Knowles*, (1901) A. C. 79. In such a case the average weekly earnings must be taken to be the hypothetical sum which the workman may be supposed to have been prevented by the accident from earning in the employment of the employer in whose service he was injured: *Ayres v. Buckeridge*; *Wheale v. Rhymney Iron Co.*, (1902) 1 K. B. 57, in both of which cases there was evidence justifying the inference that the workman would have worked six days a week

- (ii) if the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings at the time of his death, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined, on arbitration under this Act, to be reasonable and proportionate to the injury to the said dependants (*u*); and
 - (iii) if he leaves no dependants, the reasonable expenses of his medical attendance and burial, not exceeding ten pounds;
 - (b) where total or partial incapacity (*v*) for work results from the injury, a weekly payment during the incapacity after the second week not exceeding fifty per cent. of his average weekly earnings (*w*), during the previous twelve months, if he has been so long employed (*x*), but if not, then for any less period during which he has been in the employment (*y*) of the same employer, such weekly payment not to exceed one pound.
- (2.) In fixing the amount of the weekly payment, regard shall be had to the difference between the amount of the average weekly earnings of the workman before the accident and the average amount which he is able to earn after the accident, and to any payment not being wages which he may receive from the employer in respect of his injury during the period of his incapacity (*z*).
- (3.) Where a workman has given notice of an accident (*a*), he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and any proceeding under this Act in relation to compensation, shall be suspended until such examination takes place.
- (4.) The payment shall, in case of death, be made to the legal personal

for the employer in whose service he was injured. In *Bartlett v. Tutton*, (1902) 1 K. B. 72, a casual labourer was employed for one day, and there being no presumption on the facts that he would have been continued to be employed by the employers, his average weekly earnings were taken as the pay he received for his one day's work. "Earnings," in the absence of advantages incidental to the employment capable of being appraised at a money value, should be determined by the wages received, and, *semble*, the value of tuition given to an apprentice should not be taken into account: *Pomphrey v. Southwark Press*, (1901) 1 K. B. 86. Where a colliery company deducted sixpence a week from a miner's wages for lamp oil, no regard was paid to this in calculating his average weekly earnings: *Houghton v. Sutton Heath Colliery Co.*, (1901) 1 K. B. 93.

(*u*) Subject to the maximum, something may be allowed for funeral expenses: *Bevan v. Crayshaw*, (1902) 1 K. B. 25.

(*v*) *Irons v. Davis*, (1899) 2 Q. B. 330.

(*w*) See note (*t*), *supra*.

(*x*) Employed by the same employer: *Price v. Marsden*, (1899) 1 Q. B. 493.

(*y*) This has been held to mean a substantially continuous employment: *Jones v. Ocean Coal Co.*, (1899) 2 Q. B. 124; *Appleby v. Horsely Co.*, (1899) 2 Q. B. 521; *Hathway v. Argus Printing Co.*, (1901) 1 K. B. 96. But see the cases cited *supra* in note (*t*).

(*z*) *Illingworth v. Walsley*, (1900) 2 Q. B. 142; *Pomphrey v. Southwark Press*, (1901) 1 K. B. 86.

(*a*) A waiver by the employer of his right to receive notice of the accident under sect. 2 does not deprive him of his right to require the workman to submit to this examination: *Oshoin v. Fickers, Sons and Maxim*, (1900) 2 Q. B. 91.

representative (*b*) of the workman, or, if he has no legal personal representative, to or for the benefit of his dependants, or, if he leaves no dependants, to the person to whom the expenses are due : and if made to the legal personal representative shall be paid by him to or for the benefit of the dependants or other person entitled thereto under this Act.

(5.) Any question as to who is a dependant, or as to the amount payable to each dependant, shall, in default of agreement, be settled by arbitration under this Act.

(6.) The sum allotted as compensation to a dependant may be invested or otherwise applied for the benefit of the person entitled thereto, as agreed, or as ordered by the committee or other arbitrator.

(7.) Any sum which is agreed or is ordered by the committee or arbitrator to be invested may be invested in whole or in part in the Post Office Savings Bank by the registrar of the county court in his name as registrar.

(8.) Any sum to be so invested may be invested in the purchase of an annuity from the National Debt Commissioners through the Post Office Savings Bank, or be accepted by the Postmaster-General as a deposit in the name of the registrar as such, and the provisions of any statute or regulations respecting the limits of deposits in savings bank and the declaration to be made by a depositor, shall not apply to such sums.

(9.) No part of any money invested in the name of the registrar of any county court in the Post Office Savings Bank under this Act shall be paid out, except upon authority addressed to the Postmaster-General by the Treasury or by the judge of the county court.

(10.) Any person deriving any benefit from any moneys invested in a post office savings bank under the provisions of this Act, may, nevertheless, open an account in a post office savings bank or in any other savings bank in his own name without being liable to any penalties imposed by any statute or regulations in respect of the opening of accounts in two savings banks, or of two accounts in the same savings bank.

(11.) Any workman receiving weekly payments under this Act shall, if so required by the employer, or by any person by whom the employer is entitled under this Act to be indemnified, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, or such other person ; but if the workman objects to an examination by that medical practitioner, or is dissatisfied by the certificate of such practitioner upon his condition when communicated to him, he may submit himself for examination to one of the medical practitioners appointed for the purposes of this Act, as mentioned in the Second Schedule to this Act, and the certificate of that medical practitioner as to the condition of the workman at the time of the examination shall be given to the employer and workman, and shall be conclusive evidence of that condition. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

(12.) Any weekly payment may be reviewed (*c*) at the request either of the employer or of the workman, and on such review may be ended, diminished or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act.

(13.) Where any weekly payment has been continued for not less than

(*b*) This paragraph is to be read subject to pars. 5, 6, and 7 : *Daniel v. Ocean Coal Co.*, (1900) 2 Q. B. 250.

(*c*) Not on the ground of a mistake made by the county court in making his original award : *Crossfield v. Tanian*, (1900) 2 Q. B. 629. Under this paragraph, where a workman has suffered no pecuniary loss at the date of the award, the judge may make a declaration of the employer's liability, leaving the workman to apply for a review if at any future time he should become unable, by reason of the accident, to earn the same wages : *Chandler v. Smith*, (1899) 2 Q. B. 506.

six months, the liability therefor may, on the application by or on behalf of the employer, be redeemed by the payment of a lump sum, to be settled, in default of agreement, by arbitration under this Act, and such lump sum may be ordered by the committee or arbitrator to be invested or otherwise applied as above mentioned.

(14.) A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

59 & 60 Vict.
c. 25.

(15.) Where a scheme certified under this Act provides for payment of compensation by a friendly society, the provisions of the proviso to the first sub-section of section eight, section sixteen, and section forty-one of the Friendly Societies Act, 1896, shall not apply to such society in respect of such scheme.

(16.) In the application of this schedule to Scotland the expression "registrar of the county court" means "sheriff clerk of the county," and "judge of the county court" means "sheriff."

40 & 41 Vict.
c. 56.

(17.) In the application of this Act to Ireland the provisions of the County Officers and Courts (Ireland) Act, 1877, with respect to money deposited in the Post Office Savings Bank under that Act shall apply to money invested in the Post Office Savings Bank under this Act.

SECOND SCHEDULE.

ARBITRATION.

The following provisions shall apply for settling any matter which under this Act is to be settled by arbitration (*d*):—

(1.) If any committee, representative of an employer and his workmen, exists with power to settle matters under this Act in the case of the employer and workmen, the matter shall, unless either party objects, by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as herein-after provided.

(2.) If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within three months from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or in the absence of agreement by the county court judge, according to the procedure prescribed by rules of court, or if in England the Lord Chancellor so authorises, according to the like procedure, by a single arbitrator appointed by such county court judge.

(3.) Any arbitrator appointed by the county court judge shall, for the purposes of this Act, have all the powers of a county court judge, and shall be paid out of moneys to be provided by Parliament in accordance with regulations to be made by the Treasury.

52 & 53 Vict.
c. 49.

(4.) The Arbitration Act, 1889, shall not apply to any arbitration under this Act: but an arbitrator may, if he thinks fit, submit any question of law for the decision of the county court judge, and the decision of the judge on any question of law, either on such submission, or in any case where he himself settles the matter under this Act, shall be final, unless within the time and in accordance with the conditions prescribed by rules of the Supreme Court either party appeals to the Court of Appeal (*e*); and the county court judge, or the arbitrator appointed by him, shall, for the purpose of an arbitration under this

(*d*) A county court judge hearing an application for compensation under this Act is sitting as an arbitrator only, and has no jurisdiction to grant a new trial: *Mountain v. Parr*, (1899) 1 Q. B. 805.

(*e*) Security for the costs of an appeal will be ordered to be given in a suitable case: *Hall v. Snowden Hubbard & Co.*, (1899) 1 Q. B. 593; the appeal not being in the nature of a motion for a new trial: *Re Harwood and Abrahams*, (1901) 2 K. B. 304.

Act, have the same powers of procuring the attendance of witnesses and the production of documents as if the claim for compensation had been made by plaint in the county court.

(5.) Rules of court may make provision for the appearance in any arbitration under this Act of any party by some other person.

(6.) The costs of and incident to the arbitration and proceedings connected therewith shall be in the discretion of the arbitrator. The costs, whether before an arbitrator or in the county court, shall not exceed the limit prescribed by rules of court, and shall be taxed in manner prescribed by those rules.

(7.) In the case of the death or refusal or inability to act of an arbitrator, a Judge of the High Court at Chambers may, on the application of any party, appoint a new arbitrator.

(8.) Where the amount of compensation under this Act shall have been ascertained, or any weekly payment varied, or any other matter decided, under this Act, either by a committee or by an arbitrator or by agreement (*f*), a memorandum thereof shall be sent, in manner prescribed by rules of court, by the said committee or arbitrator, or by any party interested, to the registrar of the county court for the district in which any person entitled to such compensation resides, who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the said memorandum shall for all purposes be enforceable as a county court judgment (*g*). Provided that the county court judge may at any time rectify such register.

(9.) Where any matter under this Act is to be done in a county court, or by to or before the judge or registrar of a county court, then, unless the contrary intention appear, the same shall, subject to rules of court, be done in, or by to or before the judge or registrar of, the county court of the district in which all the parties concerned reside, or if they reside in different districts the district in which the accident out of which the said matter arose occurred, without prejudice to any transfer in manner provided by rules of court.

(10.) The duty of a county court judge under this Act, or of an arbitrator appointed by him, shall, subject to rules of court, be part of the duties of the county court, and the officers of the court shall act accordingly, and rules of court may be made both for any purpose for which this Act authorises rules of court to be made, and also generally for carrying into effect this Act so far as it affects the county court, or an arbitrator appointed by the judge of the county court, and proceedings in the county court or before any such arbitrator, and such rules may, in England, be made by the five judges of the county courts appointed for the making of rules under section one hundred and sixty-four of the County Courts Act, 1888, and when allowed by the Lord Chancellor, as provided by that section, shall have full effect without any further consent.

(11.) No court fee shall be payable by any party in respect of any proceeding under this Act in the county court prior to the award.

(12.) Any sum awarded as compensation shall be paid on the receipt of the person to whom it is payable under any agreement or award, and his solicitor or agent shall not be entitled to recover from him, or to claim a lien on, or deduct any amount for costs from, the said sum awarded, except such sum as may be awarded by the arbitrator or county court judge, on an application made by either party to determine the amount of costs to be paid to the said solicitor or agent, such sum to

51 & 52 Vict.
c. 43.

(*f*) A memorandum of an implied agreement was ordered to be recorded in *Jones v. Great Central Railway Co.*, 18 Times L. Rep. 66.

(*g*) As by a committal order under sect. 5 of the Debtors Act, 1869: *Bailey v. Plant*, (1901) 1 K. B. 31.

be awarded subject to taxation and to the scale of costs prescribed by rules of court.

(13.) The Secretary of State may appoint legally qualified medical practitioners for the purpose of this Act, and any committee, arbitrator, or judge, may, subject to regulations made by the Secretary of State and the Treasury, appoint any such practitioner to report on any matter which seems material to any question arising in the arbitration; and the expense of any such medical practitioner shall, subject to Treasury regulations, be paid out of moneys to be provided by Parliament.

(14.) In the application of the schedule to Scotland—

(a) "Sheriff" shall be substituted for "county court judge," "sheriff court" for "county court," "action" for "plaint," "sheriff clerk" for "registrar of the county court," and "act of sederunt" for "rules of court":

(b) Any award or agreement as to compensation under this Act may be competently recorded for execution in the books of council and session or sheriff court books, and shall be enforceable in like manner as a recorded decree arbitral:

(c) Any application to the sheriff as arbitrator shall be heard, tried, and determined summarily in the manner provided by the fifty-second section of the Sheriff Courts (Scotland) Act, 1876, save only that parties may be represented by any person authorised in writing to appear for them and subject to the declaration that it shall be competent to either party within the time and in accordance with the conditions prescribed by act of sederunt to require the sheriff to state a case on any question of law determined by him, and his decision thereon in such case may be submitted to either division of the Court of Session, who may hear and determine the same finally, and remit to the sheriff with instruction as to the judgment to be pronounced (*h*).

(15.) Paragraphs four and seven of this schedule shall not apply to Scotland.

(16.) In the application of this schedule to Ireland the expression "county court judge" shall include the recorder of any city or town.

THE WORKMEN'S COMPENSATION RULES, 1898.

DATED MAY 27th, 1898 (*i*).

Preliminary.

Effect, short title, commencement, and construction of Rules.
60 & 61 Vict.
c. 37.

1.—(1.) The following Rules shall have effect under the Workmen's Compensation Act, 1897 (in these Rules referred to as the Act), with reference to any matter or proceeding for the regulation of which Rules of Court may be made under the Act, and generally for carrying the Act into effect so far as it affects the county court or an arbitrator appointed by the judge of the county court, and proceedings in the county court or before any such arbitrator.

(2.) These Rules may be cited as the Workmen's Compensation Rules, 1898, and shall come into operation on the first day of July one thousand eight hundred and ninety-eight.

(3.) The Interpretation Act, 1899, shall apply for the purpose of the

52 & 53 Vict.
c. 63.

h) An appeal lies from the Court of Session to the House of Lords: *Osborne v. Barclay*, (1901) A. C. 269.

i) These are printed as they now stand amended by the Workmen's Compensation Rules of 1899 and of 1900, which rules "shall be read and construed as if they were contained in the Workmen's Compensation Rules, 1898."

interpretation of these Rules as it applies for the purpose of the interpretation of an Act of Parliament.

(4.) These Rules shall also be read and construed with the County Court Rules, 1889, and the County Court Rules of subsequent date amending the same; and any order and rule referred to by number in these Rules shall mean the order and rule so numbered in the County Court Rules, 1889, or in any County Court Rules of subsequent date, as the case may be.

Parties to Arbitration before Judge or Arbitrator appointed by Judge.

2.—(1.) When application is made for the settlement by the judge, or by an arbitrator appointed by the judge, of any matter which under the Act is to be settled by arbitration, the party making such application shall be called "the applicant"; and, subject to these rules, all other persons whose presence at the arbitration may be necessary to enable the judge or arbitrator effectively and completely to adjudicate upon and settle all the questions involved shall be made parties to the application, and shall be called "the respondents."

(2.) In any case in which both the undertakers as defined by the Act and a contractor with them are alleged to be liable to pay compensation under the Act, the applicant may at his option make both the undertakers and the contractor, or either of them, respondents.

3. More persons than one may be joined as applicants in one arbitration, in any case in which such persons might be joined in one action as plaintiffs under Order III., Rule 1*a*, of the County Court Rules (Rule 1 of the County Court Rules, December, 1896); and that rule, and Rules 18 and 19 of Order XLIV., shall, with the necessary modifications, apply to any such arbitration.

4.—(1.) An application on behalf of the dependants of a deceased workman for the settlement by arbitration of the amount payable as compensation to such dependants shall be made by the legal personal representative, if any, of the deceased workman on behalf of such dependants, and such legal personal representative shall file, as part of the particulars hereinafter mentioned, particulars as to the dependants on whose behalf such application is made.

(2.) If there is no such legal personal representative, the application may be made by the dependants themselves.

(3.) Provided, that if there is any conflict of interest between the dependants themselves, the application may be made by such legal personal representative on behalf of some only of such dependants, or if there is no such legal personal representative the application may be made by some only of such dependants, the other dependants in either case being named as respondents.

(4.) In the construction of this rule the term "dependants" shall include persons who claim to be dependants, but as to whose claim to rank as dependants any question arises.

5.—(1.) In any case in which the amount payable as compensation to the dependants of a deceased workman has been agreed upon or ascertained, but any question arises as to who are dependants, or as to the amount payable to each dependant, an application for the settlement of such question by arbitration may be made either by the legal personal representative (if any) of the deceased workman on behalf of the dependants or any of them, or if there is no legal personal representative, by such dependants or any of them, against the other dependants, and the persons claiming to be dependants, but as to whose claim to rank as such a question arises; or such application may be made by the persons claiming to be dependants, but as to whose claim to rank as such a question arises, or any of them, against the legal personal representative (if any) of the deceased workman, and the dependants, and such of the persons claiming to be dependants as are not applicants.

Parties to arbitration.

[*Conf.*
Order XL.,
rule 1.
Order XIV.,
rule 2.]

Joinder of applicants.

[*Conf.*
Order III.,
rule 1*a*
(Rule 1 of
December,
1896).]
Order XLIV.,
rules 18, 19.

Application by dependants.

[*Conf.*
9 & 10 Vict.
c. 93.
27 & 28 Vict.
c. 95.]

Application by dependants under Act, Sched. 1, par. 5, where amount of compensation agreed or ascertained.

(2.) In any such case, if the employer has paid the agreed or ascertained amount of compensation, it shall not be necessary to make him a respondent, but if such compensation or any part thereof is still in his hands he shall be made a respondent.

(3.) In any such case the employer, if made a respondent, may pay the amount of compensation in his hands into court, to be dealt with as the judge or arbitrator shall direct, and thereupon further proceedings against him shall be stayed.

Parties
arbitration
as to sum
payable for
medical
attendance
and burial.
Act.
Sched. 1.
par. 1 (a) (iii).

6.—(1.) An application for the settlement by arbitration of the sum payable in respect of medical attendance on and the burial of a deceased workman who leaves no dependants shall be made by the legal personal representative, if any, of the deceased workman. If there is no such legal personal representative, the application may be made by any person to whom any such expenses are due. In the latter case any other person known to the applicant as a person to whom any such expenses are due shall be joined in the application either as applicant or respondent.

Apportionment
of such sum.

(2.) In any case in which application is made for the settlement by arbitration of such amount, the amount awarded, if insufficient for the payment of such expenses in full, shall be apportioned between the persons to whom such expenses are due in such manner as the judge or arbitrator shall direct.

Parties under
disability
and partners;
representation
of parties
having the
same interest.
[Order III.,
rules 7, 8,
&c.]

7. The provisions of Rules 7 and 8 of Order III, as to parties suing or defending on behalf of other persons having the same interest, and the provisions of the County Court Rules as to persons under disability and partners suing and being sued, shall, with the necessary modifications, apply to proceedings by way of arbitration under the Act.

Application for Arbitration.

Application,
how made.

8. An application for the settlement of any matter by arbitration shall be made by the applicant filing with the registrar a request for arbitration, intitled in the matter of the Act and in the matter of the arbitration, which request shall be entered and numbered as a plaint, and shall, with the subsequent proceedings thereon, be recorded in the special register hereinafter mentioned.

Particulars.

9. Particulars shall be appended or annexed to the request, containing—

[Conf]

Order XI. 2.
Order XII. 3.
Order XIV.
2, 3.]

(a) A concise statement of the circumstances under which the application is made, and the relief or order which the applicant claims;

(b) The date of service of notice of the accident on the employer, or, if such notice has not been served, the reason for such omission; and

(c) The full name and addresses of the respondents, and of the applicant and his solicitor, if the proceedings are commenced through a solicitor.

Forms of
request and
particulars.

10.—(1.) The request and particulars shall be according to such of the forms in the Appendix as shall be applicable to the case, with such modifications as the nature of the case shall require.

(2.) A copy of the notice of the accident shall be appended or annexed to the particulars. If this rule cannot be complied with, the reason for the omission shall be stated in the particulars.

Application
by employer.

10a.—(1.) Where an employer on whom a claim for compensation has been made desires to make an application for the settlement of any matter by arbitration, he shall file a request for arbitration in accordance with Rule 8, to which the workman, or the legal personal representative (if any) and the persons claiming to be dependants of a deceased workman, or the other persons (as the case may be) on whose behalf the claim was made shall be respondents.

(2.) Particulars shall be appended or annexed to the request containing

(a) a concise statement of the circumstances under which the application is made;

- (b) A statement whether the applicant admits his liability to pay compensation, or denies such liability, wholly or partially, with (in the latter case) a statement of the grounds on and extent to which he denies liability ;
- (c) a statement of the matters which the applicant desires to have settled by arbitration ; and
- (d) The full names and addresses of the respondents, and of the applicant and his solicitor, if the proceedings are commenced through a solicitor.

11. The applicant shall deliver to the registrar with the request and particulars a copy thereof for the judge or arbitrator, and a copy for each respondent to be served.

12. Where the applicant is illiterate and unable to furnish the required information in writing, the request and particulars and copies shall be filled up by the registrar's clerk.

Proceedings on Arbitration before Judge.

Filing Day and Place for Arbitration.

13.—(1.) On the filing of a request for arbitration, the registrar shall transmit a copy of the request and particulars to the judge, who shall as soon as conveniently may be (if he decides to settle the matter himself), appoint a day and hour for proceeding with the arbitration. Such day shall be so fixed as to allow the copies of the request and particulars to be served on the respondents at least [fifteen (*k*)] clear days before the day so fixed.

(2.) The arbitration shall, subject as hereinafter mentioned, be held at the place at which the court is held.

(3.) Provided, that the judge may direct that the arbitration shall be held at any other place within the district of the court, on application in that behalf made by any party to the arbitration, and on such party filing an undertaking to provide at his own expense a place to the satisfaction of the judge in which the arbitration may be held, and to pay the necessary expenses of the judge and officers of the court attending at such place.

(4.) If such direction is given before the notices mentioned in the next following rule are issued, the registrar shall insert in such notices the place at which the arbitration has been so directed to be held.

(5.) If such direction is given after such notices have been issued, the registrar shall forthwith send notice by post to the parties of the place at which the arbitration has been so directed to be held.

Notice of Day Fixed.

14.—(1.) On the day for proceeding with an arbitration being fixed, the registrar shall give or send by post notice in writing to the applicant, stating the place at which and the day and hour on and at which the arbitration will be proceeded with, and shall issue the copies of the request and particulars, under the seal of the court, for service on the respondents, together with notices signed by the registrar himself, and under the seal of the court, stating the place at which and the day and hour on and at which the arbitration will be proceeded with, and that if the respondents do not attend in person or by their solicitors such order will be made and proceedings taken as the judge may think just and expedient.

(2.) Where (*l*) the request is filed by an employer, the notices to be served on the respondents shall be modified by the omission of the

Copies for judge and respondents.

Where applicant is illiterate.

[Conf. Order V., rule 4a.]

Fixing day and place for arbitration.

[Conf. Order XL., rule 5.]

[Conf. Order XXXIX., rules 1, 2.]

Notice to parties.

[Conf. Order XXXVIII., rule 2.]

Forms, 6, 7.

Notice where employer is applicant.

Form 7.

(*k*) Fifteen has been substituted for ten by rule 1 of the Workmen's Compensation Rules, 1899.

(*l*) Rule 2 of the Workmen's Compensation Rules, 1900.

words therein relating to the denial or admission of liability to pay compensation.

Service on Respondents.

Service on
respondents.
[Order VII.,
rule 30.]

15.—(1.) The copies and notices mentioned in the last preceding rule may be served—

- (a) By a bailiff of a court ;
- or, at the request of the applicant or his solicitor,
- (b) By the applicant or some clerk or servant in his permanent and exclusive employ ; or
- (c) By the applicant's solicitor, or a solicitor acting as agent for such solicitor, or some person in the employ of either of them.

Act, sect. 2.
Sub-sects. 4, 5.

(2.) Service may be effected either in accordance with the rules as to service of default summonses, or by registered post in accordance with the provisions of sub-sections 4 and 5 of section 2 of the Act with reference to service of notice in respect of an injury, and the provisions of those sub-sections shall apply to such service.

Where
service
effected other-
wise than by
bailiff.
[Order VII.,
rule 31.]

(3.) Where service is effected otherwise than by a bailiff, a copy of the document served, with the date and mode of service endorsed thereon, shall within three clear days next after the date of service, or such further time as may be allowed by the registrar of the court issuing such document, be delivered or transmitted to such registrar by the applicant or his solicitor. The applicant or his solicitor shall also (unless the respondent files an answer) after the time limited for filing an answer, deliver or transmit to the registrar an affidavit of the service of such document, according to Form 21 in the Appendix to the County Court Rules, with such variations as the circumstances of the case shall require.

Stay of Proceedings.

Stay of
proceedings
in other
arbitrations,
to abide
decision as to
liability in
selected
arbitration
[Conf.
Order VIII.,
rules 2-6.]

16. Where several requests for arbitration are filed by different applicants against the same respondent in the same court in respect of matters arising out of the same circumstances, the respondent may, on filing an undertaking to be bound, so far as his liability to pay compensation is concerned, by the award in such one of the said arbitrations as may be selected by the judge, apply to the judge under Order VIII. Rule 2, for an order to stay proceedings in the arbitrations other than the one so selected until an award is made in such selected arbitration ; and Rules 2 to 6 of Order VIII. shall, with the necessary modifications, apply accordingly.

Answer by Respondents.

Answer by
respondent.
[Conf.
Order X.,
rules 9, 10.]

17.—(1.) If any respondent desires to disclaim any interest in the subject-matter of the arbitration, or considers that the applicant's particulars are in any respect inaccurate or incomplete, or desires to bring any fact or document to the notice of the judge, or intends to rely on the fact that notice of the accident was not served in accordance with section 2 of the Act, or that the claim for compensation was not made within the time limited by the said section, or intends to deny (wholly or partially) his liability to pay compensation under the Act, he shall [ten (m)] clear days at least before the day fixed for proceeding with the arbitration, file with the registrar an answer, stating his name and address, and the name and address of his solicitor (if any), and stating that he disclaims any interest in the subject-matter of the arbitration, or stating in what respect the particulars are inaccurate or incomplete, or stating concisely any fact or document which he desires to bring to the notice of the judge, or on which he intends to rely, or the grounds on and extent to which he denies liability.

(2.) Such respondent shall, with such answer, file copies thereof for

Form 8.

(m) Ten was substituted for five by rule 2 of the Workmen's Compensation Rules, 1899.

the applicant and the judge, and one copy for each of the other respondents, and the registrar shall within twenty-four hours after receiving such copies transmit the same by post to the applicant and the judge and the other respondents respectively.

(3.) Subject to any answer so filed, and to the provisions of the next following paragraph, the applicant's particulars, and, in the case of a claim for compensation, the liability to pay compensation under the Act, shall be taken to be admitted.

(4.) Provided, that in case of non-compliance with this rule, and of the applicant's not consenting at the arbitration to permit a respondent to avail himself of any matter of which he should, pursuant to this rule, have given notice by filing an answer, the judge may, on such terms as he shall think fit, either proceed with the arbitration and allow the respondent to avail himself of such matter, or adjourn the arbitration to enable the respondent to file such answer.

(5.) The provisions (u) of this rule shall, with the necessary modifications, apply to a case in which a request for arbitration is filed by an employer; but a respondent who fails to file an answer shall not be taken to admit the truth of any statement in the applicant's particulars in which he denies, wholly or partially, his liability to pay compensation.

Answer where employer is applicant.

Submission to Award or Payment into Court by Respondents.

18.—(1.) Where a respondent from whom compensation is claimed admits liability, he may at any time before the day fixed for proceeding with the arbitration,

Submission to award or payment into court by respondents.

(a) Where the application is made by an injured workman, file with the registrar a notice that the respondent submits to an award for the payment of a weekly sum, to be specified in such notice; or

Form 9.

(b) Where the application is made on behalf of the dependants of a deceased workman, or for the settlement of the sum payable in respect of medical attendance on and the burial of a deceased workman who leaves no dependants, pay into court such sum of money as the respondent considers sufficient to cover his liability in the circumstances of the case.

(2.) The registrar shall, within twenty-four hours from the time of any notice filed or payment made pursuant to the last preceding paragraph, send notice thereof (with, where a notice is filed, a copy of such notice) to the applicant, and to the other respondents (if any).

[Conf. Order IX., rule 11 (2).]
Forms 10, 11.

(3.) If the applicant is a workman, and elects to accept in satisfaction of his claim the weekly payment specified in the respondent's notice, he shall send to the registrar and to the respondent by post, or leave at the registrar's office and at the residence or place of business of the respondent, a written notice stating such acceptance, within such reasonable time before the day fixed for proceeding with the arbitration as the time of filing of notice of submission by the respondent has permitted.

Acceptance of weekly payment offered.

Form 12.

(4.) If the application for arbitration is made on behalf of the dependants of a deceased workman, or for the settlement of the sum payable in respect of medical attendance and burial as aforesaid, and the applicant is willing to accept the sum paid into court in satisfaction of the compensation payable to the dependants, or in respect of such medical attendance and burial (as the case may be), he shall send to the registrar and to the respondent by post, or leave at the registrar's office and at the residence or place of business of the respondent, a written notice of such willingness, within such reasonable time before the day fixed for proceeding with the arbitration as the time of payment into court by the respondent has permitted.

[Conf. Order IX., rule 12a.]

Acceptance of sum paid into Court.

Form 12.

[Conf. Order IX., rule 12a.]

If there are any other respondents, the applicant shall in like manner give notice of such willingness to such respondents: and if any of such

(u) Rule 3 of the Workmen's Compensation Rules, 1900.

Procedure if
weekly pay-
ment offered
or sum paid
in is accepted.

respondents are willing to accept the sum paid into court in satisfaction of such compensation as aforesaid, they shall in like manner give notice of such willingness to the registrar and to the applicant and the other respondents.

(5.) If the applicant is a workman, and elects to accept in satisfaction of his claim the weekly payment submitted to by the respondent, or if in any other case the applicant and all the respondents give notice of their willingness to accept the sum paid into court, the following provisions shall apply :—

(a) Where the respondent submits to an award for the payment of a weekly sum, the judge may, on application made to him in or out of court, forthwith make an award directing payment of such weekly sum accordingly :

(b) Where the respondent has paid money into court, further proceedings against such respondent shall be stayed, except as hereinafter mentioned : and

(i.) If the applicant and the other respondents agree as to the apportionment and application of such sum, the judge may, on application made to him in or out of court on behalf of or with the consent of all such parties, forthwith make an award for such apportionment and application :

(ii.) In any other case the arbitration may proceed as between the applicant and the other respondents.

Costs
payable by
respondent.

[Conf.
Order IX.,
rule 12a (3).]

(c) In any such case the judge may, in his discretion, by his award order the respondent filing notice of submission to an award or paying money into court to pay such costs as the applicant and the other respondents or any of them may have properly incurred before the receipt of notice of submission to an award or payment into court, including, if the judge on consideration of the facts of the case shall so order, any items which might have been allowed by order of the judge at the hearing of the arbitration.

Form 12.

[Conf.
Order IX.,
rule 12a (4).]

Procedure
as to costs if
weekly sum
offered or
sum paid in
is not
accepted.

(d) If the applicant or any respondent intends to apply for any such costs, he shall give notice of his intention in his notice of acceptance.

(6.) In default of notice of acceptance by the applicant and all the respondents, the arbitration may proceed ; but if no greater weekly payment or compensation is awarded than that which the respondent has submitted to pay or has paid into court, such respondent shall not be liable to pay any further costs than such as he might have been ordered to pay if the weekly payment offered or sum paid into court had been accepted ; and the judge may order any costs incurred by such respondent after notice of submission to an award or payment into court to be paid by any party who has not given notice of acceptance of such weekly payment or sum, and may order such costs to be set off against any costs payable to such party, or to be deducted from any weekly payment or compensation awarded to such party. The judge may also order any costs incurred after notice of payment into court by any party who has given notice of acceptance to be paid by any other party who has not given such notice, and to be deducted from any compensation awarded to such last-mentioned party.

(7.) The provisions (d) of this rule shall, with the necessary modifications, apply to a case in which an employer who has filed a request for arbitration admits liability to pay compensation.

Notice to Parties against whom Indemnity claimed under Section 4 or Section 6, or otherwise.

19. Where a respondent claims to be entitled under section 4 or section 6 of the Act or otherwise to indemnity over against any person

Submission
to award or
payment into
court where
employer is
applicant.

Notice of
claim to
indemnity

not a party to the arbitration, he shall, five clear days before the day fixed for proceeding with the arbitration, file a notice of his claim, according to the form in the Appendix ; and the registrar shall seal such notice and deliver it to the respondent, who shall serve the same, together with a copy of the applicant's request and particulars, and of the notice served on the respondent under rules 14 and 15, upon the person against whom such claim is made ; and the provisions of rule 15 shall apply to such service.

20. If any person served with a notice under the last preceding rule (herein-after called the third party) desires to dispute the applicant's claim in the arbitration as against the respondent on whose behalf the notice has been given, he must appear before the judge on the day fixed for proceeding with the arbitration, or on any day to which he may have received notice from the registrar that the arbitration has been adjourned or postponed ; and in default of his so doing he shall be deemed to admit the validity of any award made against such respondent, as to any matter which the judge has jurisdiction to decide in the arbitration as between the applicant and the respondent, whether such award is made by consent or otherwise.

21.—(1.) The third party or the respondent may apply at or before the arbitration to the judge for directions : and the judge, upon the hearing of the application, may, if it shall appear desirable so to do, give the third party leave to resist the claim of the applicant against the respondent upon such terms as may be just, or to appear at the arbitration and take such part therein as may be just, and generally may give such directions as he shall think proper.

(2.) If the third party obtains leave to resist the claim of the applicant against the respondent, the judge shall have the same power to award costs as between the applicant and the third party as he has to award costs between the applicant and the respondent.

22.—(1.) Nothing in these Rules shall empower the judge to decide (otherwise than by consent) any question as to the liability of such third party to indemnify the respondent, or to make any award in favour of the respondent against such third party, or to make any further or other order than that the third party shall not be entitled in any future proceedings between the respondent and such third party to dispute the validity of the award as to any matter which the judge has jurisdiction to decide in the arbitration as between the applicant and the respondent.

(2.) Provided that, with the consent of the respondent and the third party.

(a) If the arbitration results in an award in favour of the applicant, or is finally decided otherwise than by an award, and the third party admits his liability to indemnify the respondent, the judge may, on application made to him at or after the hearing of the arbitration or the final decision thereof, make such award as the nature of the case may require in favour of the respondent against the third party ; provided that execution thereon shall not be issued without leave of the judge or registrar until after satisfaction by the respondent of the award against him, or the amount recovered against him ; or

(b) The judge may, on an application for directions, order any question as to the liability of the third party to make the indemnity claimed to be settled, as between the respondent and the third party, by arbitration after the arbitration between the applicant and the respondent, and may on such subsequent arbitration make such award as the nature of the case may require in favour of either party against the other.

(c) In any such case the judge may decide all questions of costs as between the respondent and the third party, and may order either of such parties to pay the costs of the other (including any costs payable by such party to any other party to the

under sect. 4
or sect. 6, or
otherwise.

Form 13

If person
served makes
default in
appearing, he
is to be
deemed to
admit validity
of award
against
respondent.

Application to
judge for
directions as
to conduct of
arbitration.

Judge how far
empowered
to decide
questions as
to liability of
third party.

[Conf.
Order XI.
rule 2.]

[Conf.
Order XI.
rule 3.]

[Conf.
Order XI.
rule 4.]

arbitration), or give such directions as to such costs as the justice of the case may require.

Third party
procedure
where
employer is
applicant.

22A.—The provisions (*p*) of rules 19 to 22 shall, with the necessary modifications, apply to a case in which an employer who has filed a request for arbitration claims to be entitled to indemnity over against any person not a party to the arbitration.

Claim to
indemnity
as between
respondents.

23.—(1.) Where a respondent claims to be entitled to indemnity (*q*) against any other respondent, a like notice may be issued and the like procedure may be adopted for the determination of questions between the respondents as might be issued and adopted if such last-mentioned respondent were a third party.

[*Conf.*
Order XI.,
rule 5.]

(2.) Provided that where both the undertakers as defined by the Act and a contractor with them are made respondents to an arbitration, and it is decided in such arbitration that the contractor is liable to pay compensation under the Act, the judge may, without any consent or admission of liability on the part of such contractor, make an award in accordance with paragraph (2) (a) of the last preceding rule in favour of the undertakers against the contractor.

See Act,
sect. 4.

(3.) Nothing herein contained shall prejudice the rights of the applicant against any respondent.

Procedure on Arbitration.

Procedure
before judge.

24.—(1.) Subject to the special provisions of these Rules, the procedure in an arbitration shall be the same as the procedure in an action commenced in the county court by plaint and summons in the ordinary way, and determined by the judge without a jury; and the statutory provisions and rules for the time being in force relating to such actions shall, with the necessary modifications, apply to such arbitration accordingly; and in the application of such provisions and rules the applicant's request for arbitration shall be deemed to be a summons with particulars annexed, the day fixed for proceeding with the arbitration shall be deemed to be the return day, and the applicant and respondents shall be deemed to be plaintiff and defendants respectively.

Burden of
proof of
facts not
admitted.

(2.) Provided, that (*r*) the burden of proof of any facts which are not admitted shall be the same, whoever the party may be by whom the request for arbitration is filed.

Appointment of Medical Referees under Schedule II., Paragraph 13.

Appointment
of medical
referees
under Act,
sched. 2, par.
13.

25.—(1.) Subject to and in accordance with regulations made by the Secretary of State and the Treasury under paragraph 13 of the second schedule to the Act, the judge may, at the hearing of an arbitration, appoint any legally qualified medical practitioner appointed by the Secretary of State for the purpose of the Act (in these Rules called a "medical referee"), to report on any matter which seems material to any question arising in the arbitration.

(2.) Regulations made under the said paragraph shall, so far as they affect the county court or an arbitrator appointed by the judge of the county court, and proceedings in the county court or before any such arbitrator, be deemed to be Rules of Court, and shall have effect accordingly.

(3.) When any appointment is made as aforesaid, the judge may, subject to and in accordance with such regulations, order the injured

(*p*) Rule 5 of the Workmen's Compensation Rules, 1900.

(*q*) The claim for indemnity must be stated by a five days' notice under rule 19: *Appleby v. Horwaley Co.*, (1899) 2 Q. B. 521.

(*r*) Rule 6 of the Workmen's Compensation Rules, 1900.

workman to submit himself for examination by the medical referee; and it shall be the duty of the workman, on being served with such order, to submit himself for examination accordingly.

Award.

26.—(1.) The award of the judge on any arbitration shall be in writing, and shall be sealed, filed, and served on all persons affected thereby and shall be enforceable in the same manner as a judgment or order of the court.

(2.) The judge shall have power at any time to correct any clerical mistake or error in such award arising from any accidental slip or omission.

Award.

Form 14.

52 & 53 Vict.
c. 49, s. 7 c.

Proceedings before Arbitrator appointed by Judge.

Appointment of Arbitrator by Judge.

27. With respect to the appointment of an arbitrator by the judge, the following provisions shall apply :—

(a.) If with respect to any court the Lord Chancellor, by general order, authorizes the settlement by an arbitrator appointed by the judge of matters which, in default of such authorization, would be settled by the judge, the judge may from time to time, on an application being made for the settlement of any matter, either settle the same himself, or he may, with the approval of the Lord Chancellor, appoint, by writing under his hand, and filed in the court, an arbitrator to settle such matter.

(b.) If with respect to any court the Lord Chancellor makes no such general order as aforesaid, then, on an application being made for the settlement of any matter, the judge may (if from the state of business in the court, or for any other reason, he is unable to settle such matter within a reasonable time) apply to the Lord Chancellor to authorize the settlement of such matter by an arbitrator appointed by the judge.

(c.) If the Lord Chancellor does not grant such authority, the judge shall proceed to settle the matter in accordance with the Act and these Rules.

(d.) If the Lord Chancellor grants such authority, the judge may, with the approval of the Lord Chancellor, appoint, by writing under his hand, and filed in the court, an arbitrator to settle such matter.

(e.) Where pursuant to paragraph 7 of the second schedule to the Act a judge of the High Court appoints a new arbitrator in the place of an arbitrator appointed by the judge, the party obtaining such appointment shall lodge with the registrar the order appointing such arbitrator, or a duplicate or copy thereof under the seal of the High Court; and thereupon the registrar shall act and the arbitration shall proceed in the same manner as if such arbitrator had been appointed by the judge.

Appointment
of arbitrator
by judge.

Act, sched. 2,
par. 7.

Fixing Day for Arbitration.

28. Where any matter is to be settled by an arbitrator, the judge shall return the copy of the request for arbitration to the registrar, with the appointment of such arbitrator, to be transmitted to the arbitrator; and the registrar shall transmit the copy of the request and a copy of the appointment to the arbitrator, who shall, as soon as conveniently may be, appoint a day and hour for proceeding with the arbitration, in accordance with rule 13, and the provisions of that rule as to the place

Fixing day
and place
for proceed-
ings before
arbitrator.

where an arbitration shall be held shall apply. Provided, that where the arbitration is to be held at the place where the court is held, the day appointed for the arbitration shall, if possible, be one on which the court or other suitable accommodation in the court house will be available for the arbitration.

Procedure before Arbitrator.

Procedure
before
arbitrator.

29.—(1.) On the day for proceeding with an arbitration being fixed the registrar shall proceed according to rule 14, and thenceforward the arbitration shall proceed in the same manner as an arbitration before the judge; and these rules shall apply and the officers of the court shall act accordingly, with the substitution of the arbitrator for the judge.

(2.) Provided that—

(a) In any case coming within the provisions of paragraph 5 (a) or paragraph 5 (b) (i.) of rule 18, or in any other case in which, after an arbitrator has been appointed, but before the day fixed for proceeding with the arbitration, the parties agree upon an award, the judge may, on application made to him in or out of court on behalf of or with the consent of all parties, settle the matter himself; and thereupon the functions of the arbitrator as to such matter shall cease, and the registrar shall forthwith inform him that the matter has been settled; and

(b) Any application for the enforcement of or for staying proceedings on an award, which would in the case of an award made by the judge be required to be made to the judge, shall, in the case of an award made by an arbitrator, be in like manner made to the judge.

Submission of Question of Law by Arbitrator to Judge.

Submission
of question of
law by
arbitrator to
judge.
Act, sched. 2,
par. 4.
Statement of
case.

30.—(1.) Where an arbitrator (whether agreed on by the parties or appointed by the judge) submits any question of law for the decision of the judge under paragraph 4 of the second schedule to the Act, such submission shall be in the form of a special case.

(2.) Such case shall be intitled in the matter of the Act and of the arbitration, and shall be divided into paragraphs numbered consecutively, and shall state concisely such facts and documents as may be necessary to enable the judge to decide the questions of law raised thereby. Upon the argument of such case the judge and the parties shall be at liberty to refer to the whole contents of such documents, and the judge shall be at liberty to draw from the facts and documents stated in the case any inference, whether of fact or of law, which might have been drawn therefrom if proved at the hearing of an arbitration.

Fixing day
for hearing.
[Order XL,
rule 5.]
Form 15.

(3.) Such case shall be signed by the arbitrator and sent to the registrar, who shall transmit the same to the judge, and the judge shall as soon as conveniently may be appoint a day and hour for hearing the case, and instruct the registrar to give notice thereof forthwith to the parties. Such day shall be so fixed as to allow such notice to be given ten days at least before the day fixed for the hearing, unless the judge shall, with the consent of all parties, fix an earlier day.

Copies of
case.

(4.) The registrar shall, on the application and at the cost of any party, furnish him with a copy of the case.

Power of
judge on
hearing of
case.

(5.) On the hearing of the case the judge may, after deciding the question submitted to him, remit the case with a memorandum of such decision to the arbitrator, for him to proceed thereon in accordance with such decision; or if the decision of the judge on the question submitted to him disposes of the whole matter, he may himself make an award in the arbitration in accordance with such decision.

(6.) The judge may remit the case to the arbitrator for re-statement or further statement.

(7.) The judge shall have the same power over the costs of a special case as he has over the costs of an arbitration, or he may direct that such costs shall be dealt with as costs attending the arbitration; and the provisions of the Act and these Rules as to such costs shall apply accordingly.

Subsequent Arbitration in Matter already settled by Arbitrator.

31. Where an award has been made in any matter by an arbitrator appointed by the judge, any subsequent proceedings by way of arbitration in relation to any matter settled by such award shall be taken before the same arbitrator, if his services are available for the purpose of such proceedings, unless the judge shall otherwise direct.

Appearance of Parties in Arbitration.

32.—(1.) A party to any arbitration under the Act may appear—

(a) In person :

(b) By any solicitor who would be entitled to appear for such party in an action in the county court :

(c) By counsel :

Or, by leave of the judge or arbitrator, a party may appear—

(d) By a member of his family :

(e) By a person in the permanent and exclusive employment of such party :

(f) In the case of a company or corporation, by any director of the company or corporation, or by the secretary or any other officer or any person in the permanent and exclusive employment of the company or corporation ;

(g) By any officer or member of any society or other body of persons of which such party is a member or with which he is connected ; or

(h) Under special circumstances, by any other person.

(2.) No person other than a solicitor who appears or acts on behalf of any party in any arbitration under the Act shall be entitled to have or recover any fee or reward for so appearing or acting, other than such travelling expenses and (in the case of a workman or a member of his family) allowance for time (if any) as shall be allowed by the judge or arbitrator : provided that nothing in these Rules contained shall affect the right of counsel to appear or act in any arbitration, or the right of any solicitor to recover costs in respect of his employment of counsel to appear or act as aforesaid.

Costs.

33.—(1.) Any costs of and incident to an arbitration and the proceedings connected therewith directed by the judge or by an arbitrator (whether agreed on by the parties or appointed by the judge) to be paid by one party to another shall, in default of agreement between the parties as to the amount of such costs, be taxed according to such one of the scales of costs applicable to actions in the county court as the judge or arbitrator shall direct ; and in default of such direction shall be taxed according to the scale which would be applicable if the proceeding had been an action in the county court : and the statutory provisions and rules for the time being in force as to the allowance and taxation of costs in such actions shall apply accordingly.

(1A.) Proceedings (s) on an arbitration shall be within Order L.A., rule 7.

(s) Rule 7 of the Workmen's Compensation Rules, 1900.

(2.) Where the subject-matter of the arbitration is not a capital sum, the judge or arbitrator shall determine what, for the purpose of the allowance and taxation of costs, shall be considered to be the amount of the subject-matter of the arbitration.

(3.) The judge or arbitrator, in dealing with the question of costs, may take into consideration any offer of compensation proved to have been made on behalf of the employer.

(4.) Where any workman submits himself for examination to a medical referee under paragraph 11 of the first schedule to the Act, and the certificate of the referee is used in any subsequent arbitration, any reasonable travelling and other expenses incurred by the workman in obtaining such certificate (if not otherwise provided for) may, by order of the judge or arbitrator, be allowed as costs in the arbitration.

(5.) Where a workman is ordered to submit himself for examination by a medical referee appointed to report under paragraph 13 of the second schedule to the Act, any reasonable expenses incurred by such workman in travelling to attend on such referee for examination may, by order of the judge or arbitrator, be allowed as costs in the arbitration.

Taxation of costs awarded by arbitrator agreed on by parties.

34. Where any costs are awarded by an arbitrator agreed on by the parties, it shall be the duty of the registrar of the court in which a memorandum of the decision of the arbitrator is recorded pursuant to paragraph 1 of the second schedule to the Act, on application made to him, to tax such costs, and to enter in the register the amount of such costs allowed on taxation; and such entry shall be deemed to be part of such memorandum, and shall be enforceable accordingly.

As to authority of solicitor to receive costs payable by adverse party.

34A. Where (t) any party to whom costs are awarded acts by a solicitor, such solicitor shall have the same authority to take out of court or receive any sum paid into court or payable in respect of such costs by the party against whom such costs are awarded as he would have if such costs were awarded in an action.

Duty of Judge as to taking Notes.

Note to be taken, on request, of question of law raised, &c. and copy furnished.

35. At the hearing of any arbitration or special case the judge, at the request of any party, shall make a note of any question of law raised, and of the facts in evidence in relation thereto, and of his decision thereon, and of his decision in the arbitration or on the hearing of the case: and he shall, at the expense of any party to such arbitration or case, furnish a copy of the note so taken to or allow a copy of the same to be taken by or on behalf of such party, and shall sign such copy, whether a notice of motion by way of appeal has been served or not.

[Conf. County Courts Act, 1888, ss. 120, 121.]

Appeals.

Appeals. Act, sched. 2, par. 4.

36. Appeals under paragraph 4 of the second schedule to the Act shall be had in accordance with the provisions of the Rules of the Supreme Court relating thereto.

[Order XXXII., rule 1.]
Deposit of order of court of appeal with registrar, and procedure thereon.

37.—(1.) When the court of appeal has given judgment on any appeal, any party may deposit the order of the court of appeal, or an office copy thereof, with the registrar: and the registrar shall file such order or copy, and shall transmit a copy thereof to the judge: and such order shall have the same effect as if it had been a decision of the judge.

(2.) If such order has the effect of an award or decision in the matter in favour of any party, such order shall be served and recorded, and may be proceeded on, in the same manner as if it had been an award or decision of the judge.

(3.) If such order be to the effect that an award be made or a decision given in favour of any party, the judge shall make such award or give such decision accordingly.

[Order XXXII., rules 2, 4.]

(t) Rule 3 of the Workmen's Compensation Rules, 1899.

(4.) If such order directs or involves a re-hearing or further hearing of the arbitration or special case, the judge shall as soon as conveniently may be appoint a day and hour for such re-hearing or further hearing, and shall instruct the registrar to give notice thereof forthwith to the parties.

(5.) Generally the judge shall make such award or give such decision, and give such directions and take or direct to be taken such proceedings in the matter, as may be necessary to give effect to the order of the court of appeal.

Memorandum under Schedule II., Paragraph 8.

38.—(1.) The memorandum as to any matter decided by a committee or by an arbitrator or by agreement, which is by paragraph 8 of the second schedule to the Act required to be sent to the registrar, shall be intituled in the matter of the Act, and shall be left at the office of the registrar, or sent by post by registered letter addressed to the registrar at his office, as soon as may be after the matter has been decided.

(2.) Where the matter is decided after a medical referee has been appointed to report on any matter under paragraph 13 of the said second schedule, a copy of the report of such referee shall be annexed to the memorandum and recorded therewith; and if such referee attended any proceeding in the arbitration, it shall be so stated in the memorandum.

39. If the memorandum purports to be a memorandum of a decision of a committee or an arbitrator, and to be signed by the chairman and secretary of the committee, or by the arbitrator, the registrar shall record the memorandum without further proof of its genuineness; and it shall be the duty of the committee or arbitrator, as soon as may be after the decision, to draw up such memorandum and to sign the same or cause it to be signed as aforesaid, and to leave or send the same as aforesaid, or to send the same to some party interested, to be by him so left or sent.

40. If the memorandum purports to be a memorandum of a decision arrived at by agreement, then if such memorandum purports to be signed by or on behalf of all parties to such decision, the registrar shall record it without further proof.

41. If the memorandum purports to be signed by or on behalf of one or some only of the parties, the registrar may record the same: or he may, before recording the same, send a copy thereof to the other parties affected, and request them to inform him whether the memorandum is genuine.

42. If all the parties admit the genuineness of the memorandum, or do not dispute it within a reasonable time, the registrar shall record it without further proof.

43. If any party disputes the genuineness of the memorandum, the registrar shall inform the party by whom it was left with or sent to him of such dispute, and that the memorandum will not be recorded except with the consent in writing of the party disputing the same, or by order of the judge.

44. If the consent mentioned in the last preceding rule cannot be obtained, the party by whom the memorandum was left or sent may apply to the judge to order the same to be recorded.

Proceedings for Record of Memorandum or Rectification of Register.

45. The following provisions shall apply to an application for an order that a memorandum be recorded, or an application to the judge to rectify the register pursuant to paragraph 8 of the second schedule to the Act.

(a) The application shall be made in court on notice in writing, stating the relief or order which the applicant claims.

Memorandum to be sent to registrar.

Act, sched. 2, par. 8.
Form 16.

Authentication and record of memorandum of decision of committee or arbitrator.

Authentication and record of memorandum of decision arrived at by agreement.

Inquiry as to genuineness if such memorandum signed by one party only.
Form 17.

Proceedings thereon.

Notice if genuineness disputed.

Forms 18, 19.

Application to judge to order memorandum to be recorded

Proceedings on application for record of memorandum

or rectification
of register.
Form 20.

See
Order XII.,
rule 11a.

- (b) Such notice shall be filed with the registrar, and copies thereof shall be served—
 - (i.) in the case of an application for an order that a memorandum be recorded, on the party disputing such memorandum ;
 - (ii.) in the case of an application to rectify the register, on every party who would be affected by such rectification, subject to the provisions of these Rules as to the parties to an arbitration ;
 or on the solicitor of such party, ten clear days at least before the hearing of the application, unless the judge or registrar shall give leave for shorter notice.
- (c) On the hearing of the application, witnesses may be orally examined in the same manner as on the hearing of an action.
- (d) On the hearing of the application the judge may make such order or give such directions as may be just.
- (e) The provisions of the Act and these Rules as to the costs of an arbitration before the judge shall apply to any such application.

Costs of Solicitor or Agent under Schedule II., Paragraph 12.

Application
to determine
costs payable,
to solicitor
or agent.
Act, sched. 2,
par. 12.

Form 21.

46. The following provisions shall apply to an application under paragraph 12 of the second schedule to the Act for the determination of the amount of costs to be paid to a solicitor or agent :—

- (a) Such application may be made to the judge or arbitrator at or immediately after the hearing of the arbitration.
- (b) If not so made, such application may be made at a subsequent date, but in that case it shall, if the arbitration was before the judge or before an arbitrator appointed by him, be in every case made to the judge.
- (c) The application, if made to the judge under the last preceding paragraph, shall be made in court on notice in writing in accordance with rule 45.
- (d) Such notice (a) shall be served on the person for whom the solicitor or agent acted in accordance with the said rule, and the provisions of the said rule shall apply to the proceedings on such application.
- (e) On the hearing of any application under this rule, the judge or arbitrator may award costs to the solicitor or agent, and may make an order declaring such solicitor or agent to be entitled to recover such costs from the person for whom he acted, or to be entitled to a lien for such costs on any sum awarded as compensation to such person, or to be entitled to deduct such costs from any such sum, or may make such order or give such directions as may be just.
- (f) Any costs awarded to a solicitor or agent on any such application shall, in default of agreement between the parties as to the amount of such costs, be taxed according to such one of the scales of cost applicable to actions in the county court as the judge or arbitrator shall direct ; and in default of such direction such costs shall be taxed according to the scale which would be applicable if the proceeding had been an action in the county court ; and the statutory provisions and rules for the time being in force as to the allowance and taxation of costs in such actions shall apply accordingly.
- (g) Where the subject-matter of the arbitration is not a capital sum, the judge or arbitrator shall determine what, for the purpose of

(a) This and the following sub-rules are rule 4 of the Workmen's Compensation Rules, 1899.

the allowance and taxation of such costs, shall be considered to be the amount of the subject-matter of the arbitration.

47. Where (r) an order is made by the judge or an arbitrator awarding costs to a solicitor or agent, and declaring such solicitor or agent to be entitled to recover such costs from the person for whom he acted, or to be entitled to a lien for such costs on any sum awarded as compensation to such person, or to be entitled to deduct such costs from any such sum, the following provisions shall apply:

Provisions as to order declaring lien, &c.

- (a) The registrar shall, on application made to him, tax such costs.
- (b) A copy of the order, and, when the amount to which such solicitor or agent is entitled has been ascertained by taxation, a memorandum of such amount, shall, at the request and cost of the solicitor or agent, be issued by the registrar for service on the party liable to pay the sum awarded as compensation: and service thereof may be effected on such party in accordance with rule 15.
- (c) A memorandum of such order, and when such amount has been ascertained a memorandum of such amount, shall be recorded in the register in which the memorandum or award under which the sum awarded as compensation is payable is recorded, and such last mentioned memorandum or award shall have effect subject to such order and memorandum.
- (d) The party liable to pay such compensation shall on demand pay to the solicitor or agent the amount to which he is entitled, but so that such party shall not be liable to pay any amount in excess of that which he is liable to pay for compensation, or to pay such amount by any other instalments than those by which he is liable to pay such compensation.
- (e) If the party liable to pay such compensation fails on demand to pay any amount which he is liable to pay to such solicitor or agent, the judge may, on application made to him on notice to such party in accordance with rule 45, and on proof of the order having been served on and demand for payment made to such party, order such party to pay such sum: and in default of payment the judge may order execution to issue to levy such amount.
- (f) Payment made by or execution levied on the party liable to pay such compensation shall be a valid discharge to him, as against the party entitled to such compensation, to the amount paid or levied.
- (g) Where (w) the sum awarded as compensation has been paid into court, the amount to which the solicitor or agent is entitled shall be paid to him out of such sum.

Certificate under Section 1, Sub-section 4.

48.—(1.) Where an action is brought in the county court to recover damages independently of the Act for injury caused by any accident, and the court proceeds under sub-section 4 of section 1 of the Act, the certificate given by the court shall be according to the form in the Appendix.

Certificate under Act, sect. 1, sub-sect. 4. Form 22.

(2.) The registrar shall, on receiving a certificate given by any other court under the said sub-section, record the same in like manner as if such certificate were a memorandum as to a matter decided by an arbitrator sent to the registrar pursuant to paragraph 8 of the second schedule to the Act.

(r) Rule 5 of the Workmen's Compensation Rules, 1899.

(w) Rule 6 of the Workmen's Compensation Rules, 1899.

Execution.

Execution.
Form 23.
[Conf.
Order XXV.,
rule 7.]

49.—(1.) When a party liable to pay compensation or costs under any award, memorandum, or certificate, has made default in payment of the amount awarded, or where payment is to be made by instalments, of any instalment, execution may issue against his goods without leave for the amount in payment of which he has made default.

(2.) Where such sum is not payable into court, the party applying for execution shall satisfy the registrar by affidavit or otherwise, as to the amount in payment of which default has been made.

Proceedings under Debtors Act, 1869, s. 5.

Proceedings
under
Debtors Act,
1869,
32 & 33 Vict.
c. 62, s. 5.

49A.—(1.) Where (x) proceedings by way of judgment summons under section 5 of the Debtors Act, 1869, are taken against a party liable to pay compensation or costs under any award, memorandum, or certificate, who has made default in payment of the amount awarded, or, where payment is to be made by instalments, of any instalment, the County Court Rules for the time being in force as to the committal of judgment debtors shall, with any necessary modifications, apply to such proceedings; provided, that the court shall not alter the terms or mode of payment of any sum to become payable in future under any award, memorandum, or certificate, otherwise than by consent, or under paragraph 12 of the second schedule to the Act.

(2.) Where the amount in payment of which default has been made is not payable into court, the party applying for a judgment summons shall satisfy the court, by affidavit, as to the amount in payment of which default has been made.

(3.) A judgment summons issued under this rule shall be according to the form 23A in the appendix.

Other Proceedings for Enforcement of Award, Memorandum, or Certificate.

Other pro-
ceedings for
enforcement
of award, &c.

49B. The (y) County Court Rules for the time being in force as to proceedings for the enforcement of or the recovery of money due under judgments or orders of the county court otherwise than by execution or committal shall, with the necessary modifications, apply to proceedings for the enforcement of or the recovery of money due under any award, memorandum, or certificate.

Suspension of Proceedings or Weekly Payments on Refusal to Submit to Examination under Paragraph 3 or Paragraph 11 of Schedule I.

Application
to stay pro-
ceedings
before or
after award
on refusal of
workman
to submit to
examination
under Act,
Schd. 1,
par. 3,
or par. 11.
Form 24.

50. In any case in which an arbitration is pending, or an award has been made or a memorandum recorded or a certificate given, and the employer or any person by whom the employer is entitled to be indemnified alleges that the workman who claims or has been awarded compensation refuses to submit himself for examination in accordance with paragraph 3 or paragraph 11 of the first schedule to the Act, or obstructs such examination, such employer or other person may apply to the judge or arbitrator to stay proceedings in the arbitration or to suspend the weekly payments awarded until such examination has taken place.

(2.) Such application shall be made in or out of court in accordance with rule 45, and the provisions of the said rule shall apply to the proceedings on such application, with the following modifications:—

(a) The notice shall be served five clear days at least before the

(x) Rule 8 of the Workmen's Compensation Rules, 1900.
(y) Rule 9 of the Workmen's Compensation Rules, 1900.

hearing of the application, unless the judge or registrar shall give leave for shorter notice; and

- (b) Where the application is made after award, it shall in every case be made to the judge.

Applications against Insurers under Section 5.

51. Where a workman claims to be entitled under section 5 of the Act to a charge on any sum to which any employer is entitled from insurers, such workman may, upon lodging with the registrar of the court in which the memorandum or award or certificate under which the employer is liable to pay compensation is recorded an affidavit made by the applicant or his solicitor, setting forth the circumstances in which the applicant claims to be entitled to such charge, enter a plaint to obtain payment of such sum, or so much thereof as may be sufficient to satisfy the compensation which the employer is liable to pay to the workman.

52. Thereupon a summons calling upon the insurers to show cause why they should not pay into court the sum to which the employer is entitled from them, or so much thereof as may be sufficient to satisfy the compensation which the employer is liable to pay to the workman, shall be issued by the registrar for service on the insurers.

53. Such summons shall be served in accordance with the provisions of Rule 15, and when so served shall bind in the hands of the insurers all sums due, owing, or accruing from them to the employer in respect of the compensation which he is liable to pay to the workman under the memorandum or award or certificate; and, subject to these Rules, the procedure on such summons shall be the same as if the applicant had obtained a judgment or order for the payment of money against the employer, and the sum to which the employer is entitled from the insurers were a debt due, owing, or accruing from the insurers to the employer, and the applicant had issued a garnishee summons against the insurers: and the provisions of Rules 5 to 9 and 11 to 13 of Order XXVIA. shall, with the necessary modifications, apply to such summons and the procedure thereon.

54. It shall not be necessary in the first instance to give notice of the issue of the summons to the employer or his assignee (or, in case of bankruptcy, to the official receiver or other trustee, or, in case of liquidation of a company, to the provisional or other liquidator), but the judge or registrar may at any time direct such notice to be given: and thereupon the registrar shall issue for service on the person to whom such notice is directed to be given a copy of the summons, together with a notice signed by the registrar himself and under the seal of the court, giving notice to such person as to the day on which he is to attend at the court, and that if he does not attend, either in person or by his solicitor, at the place and time mentioned in the notice, such order will be made and proceedings taken as the judge may think fit; and such summons and notice shall be served in accordance with the provisions of Rule 15.

55. Where the amount which the employer is liable to pay to a workman as compensation is a weekly payment, and such employer is entitled to a weekly payment of the same or any less amount from insurers in respect of such amount, the judge may order the insurers to pay such weekly payment direct to the workman. In any such case the insurers shall have the same rights as the employer with respect to the review or redemption of such weekly payment.

56. Where an employer is entitled to separate sums from separate insurers in respect of the amount due to a workman, all or any two or more of such insurers may be made parties to one application.

57.—(1.) Where it appears on any application under section 5 of the Act that the employer is liable to pay compensation in respect of more accidents than one, or to more workmen than one, either under one award or memorandum or certificate or under two or more separate awards or memorandums or certificates, and that such employer is entitled to any sum

Application against insurers under sect. 5.

[Conf. Order XXVIA., rule 1.]

Form 25. Summons thereon.

[Conf. Order XXVIA., rule 1.]

Service of summons, and procedure thereon.

[Conf. Order XXVIA.]

Forms 28, 29.

Provisions for notice to employer, or assignee, &c. Form 27.

Provisions as to weekly payments payable by insurers.

Application against two or more sets of insurers.

Apportionment of sum payable by insurers,

where more persons than one are entitled to compensation.

Transfer and consolidation of proceedings for this purpose.

Discovery in aid of application under sect. 5. Order XXV., rule 52.

Payment into court and application of money directed to be invested. Act, sect. 5, and Sched. 1, pars. 6, 7, 31.

Order IX., rules 21, 22.

from insurers in respect of the amounts due under such liability, but such sum is not sufficient to satisfy the whole of the amounts due under such liability, and has not, as between the employer and the insurers, been apportioned between such amounts or appropriated exclusively to some only of such amounts, the judge may order the insurers to pay such sum into court, and may, after notice given to the persons entitled to compensation in such manner as the judge shall direct, apportion such sum between the several persons entitled to compensation in such manner as may be just. For the purpose of any such apportionment, the judge may order any weekly payment to be redeemed, and may appoint any one or more proper person or persons to represent any other persons having the same interest, and may direct any necessary inquiries or accounts to be made or taken, and generally may give such directions and make such orders, as to costs or otherwise, as may be just.

(2.) Where the employer is liable to pay compensation as aforesaid under two or more separate awards or memorandums or certificates recorded in the same court, the judge may for the purposes of this rule order the proceedings under such awards or memorandums or certificates to be consolidated; and where the employer is liable under separate awards or memorandums or certificates recorded in different courts, the judge of the court in which the summons to the insurers is issued may either request the judge of the other court to transfer the proceedings in such other court to the first mentioned court, or may himself transfer the proceedings in the first mentioned court to such other court; and such orders for transfer and consolidation of proceedings may be made as may be just and expedient for the purpose of dealing with the matter in the manner most convenient to the several persons entitled to compensation.

58. In any case in which the circumstances are such that an application may be made under section 5 of the Act, the provisions of Order XXV. Rule 52, as to discovery in aid of execution shall apply in the same manner as if the employer were a debtor liable under a judgment or order; and such provisions may be resorted to either before or after an application is made.

Payment and Application of Money directed to be Invested.

59. Where pursuant to paragraphs 6 and 7 or paragraph 13 of the first schedule to the Act, or pursuant to section 5 of the Act, any sum is agreed or is ordered by a committee or an arbitrator, or by the judge, to be invested in the Post Office Savings Bank by the registrar in his name as registrar, or to be paid into the Post Office Savings Bank in the name of the registrar, the following provisions shall apply:—

- (a) The registrar of the court in which the memorandum of the agreement or of the order of the committee or arbitrator under which such sum is to be invested is recorded, or, in the case of an award made by the judge or an arbitrator appointed by him, or of an order made by the judge under section 5 of the Act, the registrar of the court in which the award or order was made, shall, on the memorandum or award or order being recorded, receive the sum to be invested from the party by whom the same is payable.
- (b) Immediately on such sum being paid, or on payment thereof being enforced, the registrar shall invest the same in accordance with the agreement, award, or order, and shall record such payment and investment in the special register hereinafter mentioned.
- (c) Any sum so paid and invested shall be paid out of court or otherwise disposed of in accordance with the agreement, award, or order under which the same is paid and invested, and, subject to the terms of such agreement, award, or order, in such manner as the judge from time to time shall direct, on application made to him in accordance with Rules 21 and 22 of Order IX.

Proceedings in one Court as to subject-matter of Award or Memorandum recorded in another Court.

60. Where an award, or a memorandum under paragraph 8 of the second schedule to the Act, or a certificate under sub-section 4 of section 1 of the Act, has been recorded in any court, and any party desires to take any subsequent proceedings with reference to the subject-matter of such award, memorandum, or certificate in any other court under paragraph 9 of the said schedule, he shall before taking such proceedings obtain from the registrar of the first-mentioned court a certified copy of such award, memorandum, or certificate, and shall file the same in the court in which he desires to take proceedings, and the registrar of such last-mentioned court shall record the same as if it had been an award made in or a memorandum or certificate sent to the court.

Filing of certified copy of memorandum, &c., recorded in one court under Act, sched 2, par. 8, before taking subsequent proceedings in another court under par. 9.

Transfer of Proceedings.

61. If the judge shall be satisfied by any party to any matter under the Act pending in his court that such matter can be more conveniently proceeded with in any other court, he may order such matter to be transferred to such other court; and thereupon the registrar shall forthwith transmit by registered post to the registrar of the court to which such matter is transferred all original documents filed in such matter, and a certified copy of all records made with reference to such matter, and shall transfer to such last mentioned court any money invested in his name as registrar; and thenceforth such matter shall be proceeded with in the court to which it is transferred in the same manner as if it had originally been commenced therein. The provisions of Order VIII., Rule 9, shall apply to any such transfer or application for a transfer.

Transfer. Conf. County Courts Act, 1888, s. 85.

Order VIII., rule 9.

Filing and Service of Documents and Notices.

62.—(1.) Where any document is to be filed with the registrar under these Rules that document may be so filed by delivering it at the office of the registrar, or by sending it by post addressed to the registrar at his office.

(2.) Where any document is to be so filed, there shall be filed with the original document as many copies of the document as there are persons to whom copies of the document or any part thereof are to be sent by the registrar, and in addition a copy for the use of the judge or arbitrator.

(3.) Where any document is under these Rules to be sent to any person by the registrar, that document may be sent by post.

(4.) Any proceeding, document, or notice which is under these Rules to be served on any party may be served on such party by the opposite party or his solicitor; and where no special provision as to the mode of service is made by these Rules, any such proceeding, document, or notice may be served on such party, or where he acts by a solicitor, on his solicitor, in manner provided by sub-sections 2 to 5 of section 2 of the Act with reference to service of notice in respect of an injury.

Act, sect. 2, sub-secs. 2 to 5.

Provisions as to parties acting by solicitors, and as to substituted service and notice in lieu of service.

[Order XXIII., rule 4; Order LI., rules 1 to 6.]

Procedure, where not otherwise provided for. See Tithe Rules 57.

Procedure Generally.

63. The provisions of Order XXIII., rule 4, and Order LI., rules 1 to 6, as to parties acting by solicitors, and as to substituted service and notice of lieu of service, shall apply to proceedings under the Act.

64. Where any matter or thing is not specially provided for under these Rules, the same procedure shall be followed and the same provisions shall apply, as far as practicable, as in a similar matter or thing under the County Courts Act, 1888, and the rules made in pursuance of that Act.

Record of Proceedings.—Special Register.

Record of
proceedings
before judge
or arbitrator.
Special
register.
Form 30.

65. Proceedings under the Act before the judge or an arbitrator appointed by him shall be recorded in the books of the Court in the manner in which other proceedings in the Court are recorded; and the registrar shall also keep a special register for the purposes of the Act, in which he shall record—

- (a) A memorandum of every application made to the judge for the settlement of any matter by arbitration;
- (b) A memorandum of every appointment of an arbitrator made by the judge or by a judge of the High Court;
- (c) A memorandum of every proceeding taken in any arbitration before the judge or an arbitrator prior to the award;
- (d) A memorandum of every appointment of a medical referee by the judge or arbitrator, and of his report, and if he is requested to attend any proceeding in the arbitration, of such request and attendance;
- (e) A memorandum of every award made by the judge, or by an arbitrator appointed by him;
- (f) A copy of every certificate under sub-section 4 of section 1 of the Act given by the Court, or sent to the registrar from any other court;
- (g) A memorandum of every special case submitted to the judge, and of the proceedings and order thereon;
- (h) A memorandum of every judgment given by the Court of Appeal on any appeal;
- (i) A copy of every memorandum sent to the registrar pursuant to paragraph 8 of the second schedule to the Act, and of the report (if any) of the medical referee annexed thereto, with a note stating whether such memorandum was recorded without further proof, or after inquiry, or by order of the judge;
- (j) If such memorandum is recorded after inquiry, a memorandum of the inquiries made and of the result thereof;
- (k) If such memorandum is recorded by order of the judge, a memorandum of the application to the judge, and of the order made thereon;
- (l) A memorandum of the result of every taxation of costs under any such memorandum, or under any award or order;
- (m) A memorandum of every application to rectify the register in respect of any memorandum, and of the proceedings and order thereon;
- (n) A memorandum of every application to the judge or arbitrator, under paragraph 12 of the second schedule to the Act, to determine the amount of costs to be paid to a solicitor or agent, and of the proceedings and order thereon, and of the result of any taxation under such order;
- (o) A copy of every certified copy filed pursuant to Rule 60;
- (p) A memorandum of every proceeding taken in the Court for the stay of any proceedings or the enforcement of any award, order, memorandum, or certificate, and of the result of such proceeding;
- (q) A memorandum of every application to the judge for an order against insurers under section 5 of the Act, and of the proceedings under such application, and the order made thereon;
- (r) A memorandum of every sum paid into court and invested by the registrar;
- (s) A memorandum of every application made to the Court with reference to any such sum, and of every order made on such application, and of the manner in which such sum is applied or disposed of;
- (t) A memorandum of every application for transfer, and of the order thereon, and the proceedings under such order;
- (u) The like memorandum as to every matter transferred to the Court as would have been recorded as to such matter if it had been originally commenced and prosecuted in the Court;
- (v) A memorandum of any other matter which the judge shall order to be recorded with reference to any matter brought into or proceeding taken in the Court under the Act.

Matters, how distinguished.

66. Every matter brought into the Court under the Act shall be intitled in the matter of the Act, and shall be distinguished by a separate number in addition to the number of the plaint (if any); and all documents filed and subsequent proceedings taken in the Court with reference to such matter shall be intitled in like manner, and shall be distinguished by the same number: and the entries made in the special register with respect to each such matter shall be entered together, and shall be kept separate from the entries with respect to any other matter.

Matters,
how distin-
guished.
Conf.
Order 11.,
rule 3.

Forms.

67. The forms in the Appendix, where applicable, and where they are not applicable forms of the like character, with such variations as the circumstances may require, may be used in proceedings under the Act.

Forms in
Appendix or
like forms
may be used.
See Tithe
Rules 58.

APPENDIX.

FORM 1.

Application for Arbitration by an Injured Workman with respect to the Compensation payable to him.

In the county court of holden at

No. of Plaint

In the matter of the Workmen's Compensation Act, 1897.

No. of Matter

In the matter of an Arbitration between

A. B.
of (*address*)
(*description*)

Applicant,

and
C. D. & Co., Limited,
of (*address*)
(*description*)

Respondents.

An arbitration under the Workmen's Compensation Act, 1897, is hereby requested between A. B. and C. D. & Co., Limited, as to the amount of compensation payable to the said A. B. under the said Act, in respect of personal injury caused to the said A. B. by accident arising out of and in the course of his employment.

Particulars are hereto appended [*or annexed*].

PARTICULARS.

1. Name and address of injured workman.
2. Name, place of business, and nature of business of respondents.
3. Nature of employment of workman at time of accident, and whether employed under respondents or under contractors with them. [*If employed under contractors who are not respondents, name and place of business of contractors to be stated.*]
4. Date and place of accident, nature of work on which workman was then engaged, and nature of accident, and cause of injury.
5. Nature of injury.
6. Particulars of incapacity for work, whether total or partial, and estimated duration of incapacity.

PARTICULARS—*continued.*

7. Average weekly earnings during the 12 months previous to the injury, if the workman had been so long employed under the same employer, or if not, during any less period during which he had been so employed.

8. Estimated average amount which the workman is able to earn after the accident.

9. Payments not being wages received from employer in respect of the injury during the period of incapacity.

10. Amount of fine (if any) under any enactment relating to mines or factories applied for benefit of injured workman.

11. Amount claimed as compensation.

12. Date of service of statutory notice of accident on respondents, and whether given before workman voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]

13. If notice not served, reason for omission to serve same.

The names and addresses of the applicant and his solicitor are :

Of the Applicant,

Of his Solicitor,

The name and address of the respondents to be served with this application are :

Dated this day of

(Signed)

[Or

Applicant.

Applicant's Solicitor.]

FORM 2.

Application for Arbitration by Legal Personal Representative of Deceased Workman on behalf of his Dependents, or by Dependents of Deceased Workman where no Legal Personal Representative, with respect to the Compensation payable in respect of the Injury to such Dependents, where Death has resulted from an Injury to the Workman, and the Settlement of Questions as to who are Dependents, and the Apportionment and Application of such Compensation.

In the county court of , holden at

No. of Plaintiff

In the matter of the Workmen's Compensation Act, 1897.

No. of Matter

In the matter of an Arbitration between

E. F.

of (address)

(description)

and

Applicant.

C. D. & Co., Limited,

of (address)

(description)

and

G. B.

of (address)

(description)

Respondents.

[or as the case may be: see Rule 4.]

An arbitration under the Workmen's Compensation Act, 1897, is hereby requested between E. F. , the legal personal representative of A. B. , deceased, acting on behalf of the dependents of the said A. B.

[*or between E.F. , a dependant of A.B. deceased*] and
C.D. & Co., Limited. , and G.B. , who claims to be a dependant
of the said A.B. ,

[*or as the case may be ; see Rule 4*]

with respect to the compensation payable to the dependants of the said
A.B. under the said Act, in respect of the injury caused to the said
dependants by the death of the said A.B. , which resulted from
injury caused to the said A.B. by accident arising out of and in the
course of his employment, and the settlement of questions as to who are
dependants and the apportionment and application of such compensation.

Particulars are hereto appended [*or annexed*].

PARTICULARS.

1. Name and late address of deceased workman.

2. Name, place of business, and nature of business of respondents from whom compensation is claimed.

3. Nature of employment of deceased workman at time of accident, and whether employed under respondents or under contractors with them. [*If employed under contractors who are not respondents, name and place of business of contractors to be stated.*]

4. Date and place of accident, nature of work on which deceased workman was then engaged, and nature of accident, and cause of injury.

5. Nature of injury to deceased workman, and date of death.

6. Earnings of the deceased workman during the 3 years next preceding the injury, if he was so long in the employment of the same employer, and if he was not so long in that employment, particulars of his average weekly earnings during the period of his actual employment under the said employer.

7. Amount of weekly payments (if any) made to the deceased workman under the Act.

8. Amount of fine (if any) under any enactment relating to mines or factories applied for benefit of deceased workman or his dependants.

9. Name and address of applicant for arbitration.

10. Character in which applicant applies for arbitration, *i.e.*, whether as legal personal representative of deceased workman or as a dependant, and if as a dependant, particulars showing how he is so.

11. Particulars as to the dependants of the deceased workman by whom or on whose behalf the application is made, giving their names and addresses, and descriptions and occupations (if any), and if infants, their respective ages, and stating whether they were wholly or partially dependent on the earnings of the deceased workman at the time of his death.

PARTICULARS — continued

12. Particulars as to any persons claiming to be dependants, but as to whose claim a question arises, and who are therefore made respondents, with their names, addresses, and descriptions and occupations (if any).

13. Particulars of amount claimed as compensation, and of the manner in which the applicant claims to have such amount apportioned and applied.

14. Date of service of statutory notice of accident on respondents from whom compensation is claimed, and whether given before deceased workman voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]

15. If notice not served, reason for omission to serve same.

The names and addresses of the applicant and his solicitor are :

Of the Applicant,

Of his Solicitor,

The names and addresses of the respondents to be served with this application are :

C. D. & Co., Limited,

G. B.,

Dated this day of

(Signed)

Applicant.

[Or

Applicant's Solicitor.]

FORM 3.

Application for Arbitration as to who are Dependants, or as to the Amount payable to each Dependant, where the Total Amount payable as Compensation to the Dependants of a Deceased Workman has been agreed or ascertained.

In the county court of , holden at

No. of Plaint

In the matter of the Workmen's Compensation Act, 1897.

No. of Matter

In the matter of an Arbitration between

E. F.

of (address)

(description)

Applicant,

and

C. D. & Co., Limited,

of (address)

(description)

and

G. H.,

of (address)

(description)

J. K.,

of (address)

(description)

and

L. M.,

of (address)

(description)

Respondents.

[or as the case may be : see Rule 5.]

An arbitration under the Workmen's Compensation Act, 1897, is hereby requested between E. F., , the legal personal representative of A. B.

, deceased (acting on behalf of N. O., P. R., &c., dependants of the said A. B.,), and C. D. & Co., Limited, and G. H., J. K., and L. M., , who are or claim to be dependants of the said A. B.,
[or as the case may be; see Rule 5]

to settle questions as to who are dependants of the said A. B., and as to the apportionment and application of the agreed *[or ascertained]* amount of compensation payable to the dependants of the said A. B., under the said Act in respect of the injury caused to the said dependants by the death of the said A. B., which resulted from injury caused to the said A. B. by accident arising out of and in the course of his employment.

Particulars are hereto appended *[or annexed]*.

PARTICULARS.

1. Name and late address of deceased workman.

2. Name and place of business of employers by whom compensation has been paid or is payable.

3. Date of accident to deceased workman, and date of death.

4. Agreed or ascertained amount of compensation to be paid to dependants of deceased workman.

5. Particulars as to whether the compensation money is still payable by the employers or has been paid by them, and if so, to whom, and in whose hands it now is.

6. Character in which the applicant applies for arbitration. *i.e.*, whether as legal personal representative of deceased workman or as a dependant, and if as a dependant, particulars showing how he is so.

7. Particulars as to the dependants or persons claiming to be dependants by whom or on whose behalf the application is made, giving their names and addresses, and descriptions and occupations (if any), and if infants, their respective ages, and stating whether they were or claim to have been wholly or partially dependent on the earnings of the deceased workman at the time of his death.

8. The like particulars as to any dependants who are made respondents.

[NOTE.—If there is a Legal Personal Representative, and he is not the Applicant, he must be made a Respondent.]

9. Particulars as to any persons claiming to be dependants, but as to whose claim a question arises, and who are therefore made respondents, with their names, addresses, descriptions, and occupations (if any).

10. Particulars of the manner in which the applicant claims to have the amount of compensation apportioned and applied.

The names and addresses of the applicant and his solicitor are :
 Of the Applicant,
 Of his Solicitor,

The names and addresses of the respondents to be served with this application are :

C. D. & Co., Limited.

G. H.

I. K.

L. M.

Dated this [or as the case may be].
 day of .

(Signed)

Applicant.

[Or

Applicant's Solicitor.]

FORM 4.

Application for Arbitration by Personal Representative of Deceased Workman with respect to the Compensation payable in respect of Expenses of Medical Attendance and Burial, or by Person to whom such Expenses are due, where Deceased leaves no Dependants.

In the county court of holden at

No. of Plaintiff

In the matter of the Workmen's Compensation Act, 1897.

No. of Matter

In the matter of an Arbitration between

E. F.,

of (address)

(description)

Applicant,

and

C. D. & Co., Limited,

of (address)

(description)

and

G. H.,

of (address)

(description)

Respondents.

An arbitration under the Workmen's Compensation Act, 1897, is hereby requested between E. F. and C. D. & Co., Limited, , and G. H. , as to the compensation payable under the said Act in respect of the reasonable expenses of medical attendance on and the burial of A. B. , deceased, whose death resulted from injury caused to the said A. B. , by accident arising out of and in the course of his employment, and the apportionment and application of such amount.

Particulars are hereto appended [or annexed].

PARTICULARS.

1. Name and late address of deceased workman.

2. Name, place of business, and nature of business of respondents from whom compensation is claimed.

3. Nature of employment of deceased workman at time of accident, and whether employed under respondents or under contractors with them. *If employed under contractors who are not respondents, name*

PARTICULARS—*continued.*

and place of business of contractors to be stated.]

4. Date and place of accident, nature of work on which deceased workman was then engaged, and nature of accident, and cause of injury.

5. Nature of injury to deceased workman, and date of death.

6. Name and address of applicant for arbitration.

7. Character in which applicant applies for arbitration, *i.e.*, whether as legal personal representative of deceased workman, or as a person to whom expenses in respect of which compensation is payable are due ; and if the latter, particulars must be given of the circumstances under which the expenses are claimed to be due to the applicant.

8. Particulars as to any other persons who claim that expenses in respect of which compensation is payable are due to them, and who are therefore made respondents, with their names and addresses.

9. Particulars of amount claimed as compensation, and of the manner in which the applicant desires such amount to be apportioned and applied.

10. Date of service of statutory notice of accident on respondents from whom compensation is claimed, and whether given before deceased workman voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]

11. If notice not served, reason for omission to serve same.

The names and addresses of the applicant and his solicitor are :

Of the Applicant,

Of his Solicitor.

The names and addresses of the respondents to be served with this application are :

C. D. & Co., Limited.

G. H.

Dated this day of .

(Signed)

, Applicant.

[Or

, Applicant's Solicitor.]

FORM 5.

Application for Arbitration with respect to the Review, Termination, Diminution, Increase, or Redemption of a Weekly Payment.

In the county court of holden at

In the matter of the Workmen's Compensation Act, 1897.

No. of Complaint

No. of Matter

In the matter of an Arbitration between
C. D. & Co., Limited,
of (address)
(description)

Applicants,

and

A. B.,
of (address)
(description)

Respondent.

[or as the case may be; see Act, Sched. 1, pars. 12, 13.]

An arbitration under the Workmen's Compensation Act, 1897, is hereby requested between C. D. & Co., Limited, and A. B.

[or as the case may be; see Act, Sched. 1, pars. 12, 13]

with respect to the review and termination [or diminution, increase, or redemption, as the case may be] of the weekly payment payable to the said A. B. under the said Act in respect of personal injury caused to the said A. B. by accident arising out of and in the course of his employment.

Particulars are hereto appended [or annexed].

PARTICULARS.

1. Name and address of injured workman.

2. Name and place of business of employers by whom compensation is payable.

3. Date and nature of accident.

4. Date of agreement, decision, award, or certificate fixing weekly payment, amount of such payment, and date from which it commenced.

5. Relief sought by applicant, whether termination, diminution, increase, or redemption.

6. Grounds on which termination, diminution, or increase is claimed.

The names and addresses of the applicants and their solicitor are:—

Of the Applicants,

Of their Solicitor,

The name and address of the respondent to be served with this application are:—

Dated this day of .

(Signed)

Applicants.

[or

Applicants' Solicitor.]

FORM 6.

Notice to Applicant of Day upon which Arbitration will be proceeded with.

[Heading as in Request for Arbitration.]

TAKE NOTICE that the judge of this Court [or Mr. , the arbitrator appointed by the judge of this Court] will proceed with the arbitration in this matter at on the day of at the hour of o'clock in the noon.

Dated this day of .

To
Of

Registrar of the Court.

FORM 7.

Notice to Respondent of Day upon which Arbitration will be proceeded with.

[*Heading as in Request for Arbitration.*]

TAKE NOTICE that the judge of this Court [or Mr. , the arbitrator appointed by the judge of this Court] will proceed with the arbitration applied for in the request and particulars a sealed copy of which is served herewith at on the day of at the hour of o'clock in the noon: and that if you do not attend either in person or by your solicitor at the time and place above mentioned such order will be made and proceedings taken as the judge [or arbitrator] may think just and expedient.

And further take notice that if you wish to disclaim any interest in the subject matter of the arbitration, or consider that the applicant's particulars are in any respect inaccurate or incomplete, or desire to bring any fact or document to the notice of the judge [or arbitrator], or intend to rely on any fact, or to deny (wholly or partially) your liability to pay compensation under the Act, you must file with me an answer, stating your name and address and the name and address of your solicitor (if any), and stating that you disclaim any interest in the subject matter of the arbitration, or stating in what respect the applicant's particulars are inaccurate or incomplete, or stating concisely any fact or document which you desire to bring to the notice of the judge [or arbitrator], or on which you intend to rely, or the grounds on and extent to which you deny liability to pay compensation.

Such answer, together with a copy thereof for the judge [or arbitrator], and a copy for the applicant and for each of the other respondents, must be filed with me [10 (z)] clear days at least before the day of .

If no answer is filed, and subject to such answer, if any, the applicant's particulars and your liability to pay compensation will be taken to be admitted.

Dated this day of .

To
Of Registrar of the Court.

FORM 8.

Answer by Respondents.

[*Heading as in Request for Arbitration.*]

TAKE NOTICE—

That the respondent, G. H., disclaims any interest in the subject matter of the above arbitration.

Or

That the respondents, C. D. & Co., Limited, state that the applicant's particulars filed in this matter are inaccurate or incomplete in the following particulars:—

Or

That the respondents, C. D. & Co., Limited, desire to bring to the notice of the judge [or arbitrator] the following facts:—

That the applicant, A. B., refuses to submit himself to medical examination as required by the respondents C. D. & Co., Limited, in accordance with paragraph 3 of the first Schedule to the said Act [or obstructs the medical examination required by the respondents, C. D. & Co.,

(z) Ten days are substituted for five days by rule 2 of the Workmen's Compensation Rules, 1900.

Limited, in accordance with paragraph 3 of the first Schedule to the said Act]

(or as the case may be)

Or

That the respondents, C. D. & Co., Limited, intend at the hearing of the arbitration to give in evidence and rely on the following facts :

That no notice of the alleged accident was given to the respondents as required by section 2 of the said Act :

That the claim for compensation with respect to the alleged accident was not made within six months from the occurrence of the accident [or in case of death, within six months of the death of the said A. B.] .

That a scheme of compensation [benefit or insurance] for the workmen of the respondents, C. D. & Co., Limited, in employment as has been duly certified by the Registrar of Friendly Societies, and such certificate has not been revoked, and the said C. D. & Co., Limited, contracted with the said A. B. by a contract which was in force at the date of the alleged accident that the provisions of the said scheme should be substituted for the provisions of the above-mentioned Act, and the said C. D. & Co., Limited, are consequently liable only in accordance with the said scheme :

Or

That the respondents, C. D. & Co., Limited, deny their liability to pay compensation under the above-mentioned Act in respect of the injury to A. B. mentioned in the applicant's particulars, and that the grounds upon which they deny their liability are :—

That the employment of the said A. B. was not an employment to which the said Act applies ; or

That the injury to the said A. B. was not caused by accident arising out of and in the course of his employment ; or

That the injury to the said A. B. is attributable to the serious and wilful misconduct of the said A. B. .

That at the time of the alleged accident the said A. B. was not immediately employed by the respondents C. D. & Co., Limited, but was employed by of , a contractor with the said C. D. & Co., Limited, in the execution by the said of work which was merely ancillary [or incidental] to, and was no part of or process in the trade or business carried on by the said C. D. & Co., Limited.

(or as the case may be.)

And further take notice, that the names and addresses of the said respondents and their solicitors are

Of the Respondents,

C. D. & Co., Limited,

Of their Solicitors,

Dated this day of

(Signed)

Solicitors for the Respondents,
C. D. & Co., Limited.

To the Registrar of the Court, and

To the Applicant, A. B., and

To the Respondents

(if any, naming them).

FORM 9.

Notice by Respondent Admitting Liability, and Submitting to an Award for Payment of a Weekly Sum, or Paying Money into Court.

[Heading as in Request for Arbitration.]

TAKE NOTICE—

That the respondents, C. D. & Co., Limited, admit their liability to pay compensation in the above-mentioned matter.

And they hereby submit to an award for payment by them to the applicant, A. B., of the weekly sum of , such weekly payment

to commence as from the day of , and to continue during the total or partial incapacity of the said A. B. for work, or until the same shall be ended, diminished, increased, or redeemed in accordance with the provisions of the above-mentioned Act.

And for payment by them to the said A. B. forthwith after the award of the amount of such weekly payments calculated from the day of until the first Saturday [*or other usual pay day*] after the date of the award, and for the payment thereafter of the said sum of to the said A. B. on Saturday [*or other usual pay day*] in every week.

[*Or*, And the said C. D. & Co., Limited, herewith pay into Court the sum of £ in satisfaction of such liability.]

Dated this day of .
(Signed)

Solicitors for the Respondents,
C. D. & Co., Limited.

To the Registrar of the Court, and

To the Applicant A. B., and

To the Respondents

(*if any, naming them*).

FORM 10.

Notice of Filing of Submission to an Award.

[*Title as in Request for Arbitration.*]

TAKE NOTICE—

That the respondents, C. D. & Co., Limited, have this day filed with me a notice (copy of which is sent herewith) that they admit their liability to pay compensation in the above-mentioned matter, and submit to an award for payment by them to you of the weekly sum of .

If you elect to accept such weekly sum in satisfaction of your claim, you must send to the registrar of this Court, and to the said C. D. & Co., Limited, a written notice forthwith by post, or leave such notice at the office of the registrar, and at the residence or place of business of the said C. D. & Co., Limited.

If you send such notice, the judge of this Court will, on application made to him, make an award directing payment of such weekly sum to you, and you will be liable to no further costs.

In default of such notice, the arbitration will be proceeded with; and if no greater weekly payment is awarded to you, you will be liable to be ordered to pay the costs incurred by the respondents subsequent to the receipt by you of this notice.

Dated this day of .

Registrar of the
Court.

To the Applicant, A. B.

FORM 11.

Notice of Payment into Court.

[*Title as in Request for Arbitration.*]

TAKE NOTICE—

That the respondents, C. D. & Co., Limited, have this day filed with me a notice that they admit their liability to pay compensation in the above-mentioned matter, and they have paid into Court the sum of £ in satisfaction of such liability.

If you are willing to accept the sum so paid into Court in satisfaction of the compensation payable in the above-mentioned matter, you must send to the registrar of this Court, and to the said C. D. & Co., Limited,

and to the other respondents [*or, where this notice is sent to a respondent, to the applicant and the other respondents*], a written notice forthwith by post, or leave such notice at the office of the registrar, and at the residence or place of business of the said C. D. & Co., Limited, and at the residence or place of business of each of the other respondents [*or of the applicant and each of the other respondents*].

If you and all the other respondents [*or, If you and the applicant and all the other respondents*] send such notice, and agree as to the apportionment and application of the said sum of £ , the judge of this Court will, on application made to him, make an award for such apportionment and application, and you will be liable to no further costs.

If you and all the other respondents [*or, If you and the applicant and all the other respondents*] send such notice, but do not agree as to the apportionment and application of the said sum of £ , the arbitration will be proceeded with as between you and such other respondents [*or, as between the applicant and yourself and such other respondents*].

In default of such notice being sent by you and all the other respondents [*or, by the applicant and yourself and all the other respondents*], the arbitration will be proceeded with: and if no greater amount than the said sum of £ is awarded as compensation, the parties who do not send such notice will be liable to be ordered to pay the costs incurred by the respondents, C. D. & Co., Limited, subsequent to the receipt by such parties of this notice, and also any costs incurred subsequent to the receipt of this notice by any parties who send notice of their willingness to accept the said sum of £ in satisfaction of the compensation payable in the above-mentioned matter.

Dated this day of .

Registrar of the
Court.

To the Applicant A. B.
[*or To the Respondent G. H.*]
(*or as the case may be*).

FORM 12.

Notice of Acceptance of Weekly Sum offered, or of Willingness to accept Sum paid into Court.

[*Heading as in Request for Arbitration.*]

TAKE NOTICE—

That the applicant, A. B. accepts the weekly sum offered by the respondents, C. D. & Co., Limited, in satisfaction of his claim in the above-mentioned matter [*or, that the applicant E. F. [*or, the respondent G. H.*] is willing to accept the sum of £ paid into Court by the respondents, C. D. & Co., Limited, in satisfaction of the compensation payable in the above-mentioned matter*].

But the applicant [*or the said respondent, G. H.*] will apply to the judge to include in his award an order directing the said respondents, C. D. & Co., Limited, to pay the costs properly incurred by the applicant [*or the said respondent G. H.*] before the receipt of notice of the offer of the said weekly sum [*or of notice of payment of the said sum of £ into Court*].

Dated this day of .

(Signed)

Applicant,

or

Respondent.

To the Registrar of the Court, and
To the Respondents, C. D. & Co., Limited, and
To the Applicant, A. B., and
To the Respondents
(*naming them*).

FORM 13.

*Notice by Respondent to Third Parties.**[Heading as in Request for Arbitration.]*

To Mr. , of (address and description).

TAKE NOTICE—That A. B. of, &c., has filed a request for arbitration (a copy whereof is hereby annexed) as to the amount of compensation payable by the respondents, C. D. & Co., Limited, to the said A. B. under the said Act in respect of personal injury caused to the said A. B. by accident arising out of and in the course of his employment.

The respondents, C. D. & Co., Limited, claim to be indemnified by you against their liability to pay such compensation, on the ground that at the time of the injury in respect of which compensation is claimed the said A. B. was not immediately employed by the said C. D. & Co., Limited, but was employed by you in the execution of work in respect of which the said C. D. & Co., Limited, had contracted with you for the execution thereof by or under you, and that you would, independently of section 4 of the said Act, have been liable to pay compensation in respect of such injury.

[Or on the ground that the injury for which compensation is claimed was caused under circumstances creating a legal liability on your part to pay damages in respect thereof]

(or as the case may be).

And take notice, that if you wish to dispute the applicant's claim as against the respondents, C. D. & Co., Limited, you must appear before the judge [or arbitrator] at the time and place mentioned in the notice a copy of which is hereunto annexed.

In default of your so appearing you will not be entitled in any future proceedings between the respondents, C. D. & Co., Limited, and yourself to dispute the validity of the award made in the said arbitration as to any matter which the judge [or arbitrator] has jurisdiction to decide in such arbitration as between the applicant and the respondents C. D. & Co., Limited, whether such award is made by consent or otherwise.

Dated this day of

(Signed) C. D. & Co., LIMITED,
By

Secretary.

To

of

*or*Solicitors for the Respondents,
C. D. & Co., Limited.

FORM 14.

*Award.**(i.) In Case of Application by Workman.**[Heading as in Request for Arbitration.]*

Having duly considered the matters submitted to me, I do hereby make my award as follows:—

1. I order that the respondents, C. D. & Co., Limited, do pay to the applicant, A. B., the weekly sum of as compensation for personal injury caused to the said A. B. on the day of by accident arising out of and in the course of his employment as a workman employed by the said C. D. & Co. in [state nature of employment] such weekly payment to commence as from the day of , and to continue during the total or partial incapacity of the said A. B. for work, or until the same shall be ended, diminished,

increased, or redeemed in accordance with the provisions of the above-mentioned Act.

2. And I order that the said C. D. & Co., do forthwith pay to the said A. B., the sum of £ being the amount of such weekly payments calculated from the day of until the day of [the first Saturday or other usual pay day after the date of the award] and do thereafter pay the said sum of to the said A. B. on Saturday (or other usual pay day) in every week.

3. And I order that the said C. D. & Co., do pay to the registrar of this Court, for the use of the applicant, his costs of and incident to this arbitration, such costs, in default of agreement between the parties as to the amount thereof, to be taxed by the registrar under column of the scales of costs in use in the county courts, and to be paid by the said C. D. & Co., to the registrar within 14 days from the date of the certificate of the result of such taxation.

Dated this day of .

Judge [or Arbitrator].

(ii.) *In Case of Application by Dependents.*

[*Heading as in Request for Arbitration.*]

Having duly considered the matters submitted to me, I do hereby make my award as follows :

1. I order that the respondents, C. D. & Co., Limited, do pay the sum of £ to the dependants of A. B., late of , deceased, as compensation for the injury resulting to such dependants from the death of the said A. B., which took place on the day of from injury caused to the said A. B. on the day of by accident arising out of and in the course of his employment as a workman employed by the said C. D. & Co., Limited, in [state nature of employment].

2. And I declare that the persons hereinafter named are entitled to share in such compensation as dependants of the said A. B., that is to say, J. B., the widow of the said A. B. and K. B., an infant daughter of the said A. B.

3. And I declare that the respondent G. B., the father of the said A. B., is not entitled to share in such compensation as a dependant of the said A. B.

4. And I order that the said sum of £ be apportioned between the said J. B. and K. B. in the proportions following, that is to say :—

I apportion the sum of £ to or for the benefit of the said J. B., and the sum of £ to or for the benefit of the said K. B.

5. And I order that the said C. D. & Co., Limited, do pay the said sum of £ to the applicant, E. F., the legal personal representative of the said A. B. [or if no legal personal representative, to the registrar of this Court,] for the use of the said J. B. within 14 days from the date of this award, and that the said C. D. & Co., Limited, do within the same period pay the said sum of £ apportioned to or for the benefit of the said K. B. to the registrar of this Court.

6. And I order that the said last mentioned sum be invested by the registrar in his name in the Post Office Savings Bank for the benefit of the said K. B., and that the interest arising from such investment be from time to time, until further order, paid to the said J. B. to be by her applied for the maintenance, education, or benefit of the said K. B.

7. And I order that the said C. D. & Co., Limited, do pay to the registrar of this Court, for the use of the applicants, their costs of and incident to this arbitration, such costs, in default of agreement between

the parties as to the amount thereof, to be taxed by the registrar under column of the scales of costs in use in the county courts, and to be paid by the said C. D. & Co., Limited, to the registrar within 14 days from the date of the certificate of the result of such taxation.

[Add directions (if any given) as to costs occasioned by claim of person claiming as a dependant whose claim is disallowed.]

Dated this day of .

Judge [or Arbitrator].

(iii.) *In Case of Application by Person to whom Expenses of Medical Attendance or Burial are due.*

[Heading as in Request for Arbitration.]

Having duly considered the matters submitted to me, I do hereby make my award as follows:—

1. I order that the respondents, C. D. & Co., Limited, do pay the sum of £10 for or towards the expenses of medical attendance on and the burial of A. B., late of , deceased, who died on the day of from injury caused on the day of by accident arising out of and in the course of the employment of the said A. B. as a workman employed by the said C. D. & Co., Limited, in [state nature of employment].

2. And I declare that the persons hereinafter named are entitled to share in such compensation, that is to say:

The applicant, E. F. , in respect of charges amounting to £ due to him for medical attendance on the said A. B. and the respondent, G. H. , in respect of charges amounting to £ due to him for the burial of the said A. B. .

3. And I order that the respondents, C. D. & Co., Limited, do pay the said sum of £10 to the registrar of this Court within 14 days from the date of this award, and that the said sum of £10 be apportioned between and paid to the said E. F. and G. H. in proportion to the amounts due to them respectively as aforesaid.

4. And I order that the said C. D. & Co., Limited, do pay to the registrar of this Court for the use of the applicant, E. F., and the respondent, G. H., their respective costs of and incident to this arbitration, such costs, in default of agreement between the parties as to the amount thereof, to be taxed by the registrar under column of the scales of costs in use in the county courts, and to be paid by the said C. D. & Co., Limited, to the registrar within 14 days from the date of the certificate of the result of such taxation.

Dated this day of .

Judge [or Arbitrator].

[Note.—The above forms will serve as guides for framing awards in other cases of arbitration.]

FORM 15.

Notice of Day upon which Special Case will be heard.

In the county court of , holden at

[Heading as in Special Case.]

TAKE NOTICE that the judge of this Court will hear the special case stated by Mr. , the arbitrator in the above-named matter, at a Court to be holden at , on the day of at the hour of in the noon: and that if you do not attend in person or by

your solicitor at the place and time above-mentioned, such order will be made and proceedings taken as the judge may think just.

You may obtain a copy of the case upon application at my office and upon prepayment of the costs of such copy.

Dated this day of .

Registrar of the Court.

To *The Applicant and Respondents.*

FORM 16.

Form of Memorandum under Paragraph 8 of Schedule II.

To the Registrar of the county court of , holden at
In the matter of the Workmen's Compensation Act, 1897,
and

In the matter of an Arbitration between

A. B.	of, &c.,	Applicant,
	and	
C. D. & Co., Limited,		
of, &c.,		Respondents.

or, where the matter has been decided by agreement without arbitration

In the matter of an Agreement between

A. B.	of, &c.,	
	and	
C. D. & Co., Limited,		
of, &c.,		.]

Be it remembered, that on the day of personal injury was caused to the said A. B. of, &c., who was a workman employed by C. D. & Co., Limited, of, &c., in *[state nature of employment]* by accident arising out of and in the course of his employment :

And that on the day of the following agreement was come to by and between the said A. B. and the said C. D. & Co., Limited, that is to say :

or, And that on the day of the following decision was given by a committee representative of the said C. D. & Co., Limited, and their workmen, having power to settle matters under the above-mentioned Act in the case of the said C. D. & Co., Limited, and their workmen ; that is to say :

or, And that on the day of the following award was made and given by me, the undersigned , being an arbitrator agreed on by the said A. B. and the said C. D. & Co., Limited ; that is to say :

[Here set out copy of agreement, decision, or award.]

or, where death resulted from the accident,

Be it remembered, that on the day of personal injury was caused to A. B. late of deceased, who was a workman employed by C. D. & Co., Limited, of, &c., in *[state nature of employment]* by accident arising out of and in the course of his employment, and that on the day of the said A. B. died as the result of such injury :

And that on the day of the following agreement was come to by and between C. B. G. B. &c., the dependants of the said A. B. within the meaning of the above-mentioned Act, and the said C. D. & Co., Limited, that is to say :

or, And that on the day of the following decision was given by a committee representative of the said C. D. & Co., Limited, and their workmen, having power to settle matters under the above-

mentioned Act in the case of the said C. D. & Co., Limited, and their workmen; that is to say:]

[*or*, And that on the day of the following award was made and given by me, the undersigned, being an arbitrator agreed on by C. B. G. B. , &c., , the dependants of the said A. B. within the meaning of the above-mentioned Act, and the said C. D. & Co., Limited, ; that is to say:]

[*Here set out copy of agreement, decision, or award.*]

A copy of the report of Mr. , a medical referee appointed to report in the above-mentioned matter, is herewith annexed [*add, if so*, The said Mr. attended the arbitration on the day of].

You are hereby requested to record this memorandum, pursuant to paragraph 8 of the second schedule to the above-mentioned Act.

Dated this day of .

[*To be signed—*

In the case of an agreement, by the parties or some or one of them, or by their or his solicitor on their or his behalf:

In the case of a decision by a committee, by the chairman and secretary on behalf of the committee:

In the case of an award, by the arbitrator.]

FORM 17.

Inquiry as to Genuineness of Memorandum.

In the county court of , holden at

[*Heading as in Memorandum.*]

TAKE NOTICE, that a memorandum, copy of which is hereto annexed, has been sent to me for registration.

Such memorandum, which appears to affect you, is not signed by you or on your behalf.

I have therefore to request you to inform me in due course of post, whether you admit the genuineness of the memorandum, or whether you dispute it, and if so, in what particulars.

If you do not inform me in due course of post that you dispute the genuineness of the memorandum, it will be recorded without further inquiry, and will be enforceable accordingly.

If you dispute its genuineness, it will not be recorded, except with your consent in writing, or by order of the judge of this Court.

Dated this day of

Registrar of the Court.

To

FORM 18.

Notice Disputing Memorandum.

In the county court of , holden at

[*Heading as in Memorandum.*]

TAKE NOTICE, that the undersigned C. D. & Co., of &c., dispute the genuineness of the memorandum sent to you for registration in the above-mentioned matter in the following particulars:—

[*Here state particulars.*]

Dated this day of .

C. D. & Co., Limited,
by

Secretary,

[*or*

Solicitors for C. D. & Co., Limited.]

To

The Registrar.

FORM 19.

Notice that Genuineness of Memorandum is disputed.

[*Heading as in last Form.*]

TAKE NOTICE, that the genuineness of the memorandum in the above-mentioned matter left with [or sent to] me by you is disputed by of , a party affected by such memorandum, but who has not signed the same, in the following particulars :

[*Here state particulars of dispute.*]

The memorandum will therefore not be recorded, except with the consent in writing of the said , or by order of the judge of this Court.

Dated this day of .

Registrar of the Court.

To

FORM 20.

Notice of Application for Registration of Memorandum or for Rectification of Register.

In the county court of , holden at

[*Title as in Memorandum.*]

TAKE NOTICE, that I intend to apply to the judge at on the day of , at the hour of o'clock in the noon [*in case of notice by solicitor, on behalf of of]* for an order for the registration of the memorandum sent to the registrar in the above-mentioned matter [or for an order for the rectification of the memorandum recorded in the above-mentioned matter] by (*state particulars of rectification applied for*), and for consequential directions, and for costs.

Dated this day of .

Applicant.

[*Or Applicant's Solicitor.*]

To the Registrar of the Court
and to
and to Messrs.
(his [*or their*] solicitors).

FORM 21.

Notice of Application for Determination of Amount of Costs under paragraph 12 of Schedule II. to the Act.

In the county court of , holden at

[*Title as in Award or Memorandum.*]

TAKE NOTICE, that I intend to apply to the judge at on the day of at the hour of o'clock in the noon, to determine the amount of costs to be paid to me as solicitor [*or agent*] for you A. B. in the above-mentioned matter; and for an order declaring that I am entitled to a lien for such amount on or to deduct such amount from the sum awarded as compensation to you the said A. B. in the above-mentioned matter, and for consequential directions.

Dated this day of .

Applicant.

To the Registrar of the Court.
and to
A. B.
of

FORM 22.

Form of Certificate under Section 1, sub-section 4.

In the county court of _____, holden at _____

No. of plaint.

Between

A. B.,

of (address)
(description)

Plaintiff.

and

C. D. & Co., Limited,

of (address)
(description)

Defendants.

And in the matter of the Workmen's Compensation Act, 1897.

I hereby certify that on the _____ day of _____ the above-named plaintiff commenced the above-named action against the above-named defendants claiming

[Here state claim of plaintiff in action.]

And that on the trial of the said action on the _____ day of _____ was determined that the injury in respect of which the plaintiff claimed damages in the said action was one for which the defendants were not liable in the said action, but that such defendants would have been liable to pay compensation in respect of such injury under the above-mentioned Act :

And that thereupon the said action was dismissed, but the Court, on the request of the plaintiff, proceeded to assess the compensation to which the defendants would have been liable to pay under the said Act.

And that the Court assessed such compensation at the sum of £ _____ and directed *(state directions given as to payment of compensation, and directions, if any given, as to costs, and as to the deduction from the compensation of any costs which in the judgment of the Court were caused by the plaintiff bringing the action instead of proceeding under the Act).*

Dated this _____ day of _____ .

Registrar of the Court.

FORM 23.

Execution on Award or Memorandum or Certificate.

In the county court of _____, holden at _____

[Title as in Award, Memorandum, or Certificate.]

Whereas on the _____ day of _____ an award was made in the above-mentioned matter by the judge [or by Mr. _____, an arbitrator appointed by the judge] whereby it was ordered *[state operative parts of award]* [or whereas on the _____ day of _____ a memorandum was recorded in this Court of an agreement [or decision or award] come to [or given or made] in the above-mentioned matter, whereby it was agreed [or ordered] *[state operative parts of agreement, decision or award]*

[or whereas on the _____ day of _____ a memorandum was recorded in this Court of a certificate given by the county court of _____, holden at _____ to the effect that *[state operative parts of certificate]* :

And whereas default has been made in payment of the sum of £ _____ payable by the said _____ into Court [or to the said A. B.] according to the said award [or memorandum or certificate] ;

These are therefore *[as in ordinary executions.]*

[This form to be adapted to the circumstances of the case where execution is ordered to issue under Rule 47, paragraph (c), for costs.]

FORM 23A.

Judgment Summons on Award, Memorandum, or Certificate.

In the county court of holden at

[*Title as in Award, Memorandum, or Certificate.*]

Whereas on the day of an award was made in the above-mentioned matter by the judge (*or by Mr. , an arbitrator appointed by the judge*), whereby it was ordered (*state operative parts of award*): [*or whereas on the day of a memorandum was recorded in this Court of an agreement (or decision or award) come to (or given or made) in the above-mentioned matter whereby it was agreed (or ordered) (state operative parts of agreement, decision, or award): (or whereas on the day of a memorandum was recorded in this Court of a certificate given by the County Court of holden at to the effect that (state operative parts of certificate):* And whereas default has been made in payment of the sum of £ payable by you the above-named into Court (*or to the said A. B.*) according to the said award [*or memorandum or certificate*]:

You the said are therefore hereby summoned to appear personally in this Court at (*place where Court holden*) on the day of 19 , at the hour of in the noon, to be examined on oath by the Court touching the means you have or have had since the date of the award (*or memorandum or certificate*) to pay the said sum, in payment of which you have made default; and also to show cause why you should not be committed to prison for such default.

Dated this day of 19 .

Registrar,
£ s. d.

Amount in payment of which default has been made ...

Cost of this summons

Total sum due

NOTE.—*This form to be adapted to the circumstances of the case where a summons is issued under the County Court Rules, Order XXV., rule 14b, against a person alleged to be a partner in or sole member of a firm, or to be carrying on business in any name other than his own. If an order of commitment is made it should be according to the Form 57 in the Appendix to the County Court Rules, such form being adapted to the case of default in payment of an amount due under an award, memorandum, or certificate.*

FORM 24.

Notice of Application to stay Proceedings in Arbitration or suspend weekly Payments, under Schedule I., paragraph 3, or paragraph VI. and Rule 50.

[*Heading as in Request for Arbitration, or Award, or Memorandum or Certificate as the case may be.*]

TAKE NOTICE that I intend to apply to the judge [*or to Mr. the arbitrator appointed in the above-mentioned matter*] at on the day of at the hour of o'clock in the noon, [on behalf of Messrs. C. D. & Co., Limited, of &c.,] for an order staying the proceedings in the above-mentioned arbitration [*or suspending the weekly payments awarded to you by the above-mentioned award, or memorandum or certificate*] on the ground that you refuse to submit yourself to medical examination as required by me [*or by the said C. D. & Co., Limited*], in accordance with paragraph 3 [*or paragraph 11*] of the first schedule to the above-mentioned Act [*or that you obstruct the medical examination required by me (or by the said C. D. & Co., Limited, in accordance with paragraph 3 (or paragraph 11) of the first*

schedule to the above-mentioned Act], and for consequential directions, and for costs.

Dated this day of .
 's To A. B., of (Signed) C. D. & Co., Limited,
 and to Messrs. by Secretary.
 his Solicitors [or
 Solicitors for C. D. & Co., Limited.]

FORM 25.

Affidavit on Summons against Insurers under Section 5 of the Act.

In the county court of , holden at

[*Title as in Award, Memorandum, or Certificate.*]

I, A. B. of [or I, E. F., of solicitor to A. B.
 of] make oath and say as follows:

1. On the day of an award was made in the above-mentioned matter by the judge [or by Mr. an arbitrator appointed by the judge] whereby it was ordered [*state operative parts of award*] [or on the day of a memorandum was recorded in this Court of an agreement [or decision, or award, or certificate] come to [or given or made] in the above-mentioned matter whereby it was agreed [or determined or ordered] [*state operative parts of agreement, decision, award, or certificate.*]

2. The sum of £ [or a weekly payment of from the day of as the case may be] still remains due [or payable] to me [or to the said A. B.] from or by the said C. D. under the said award [or memorandum or certificate.]

3. The said C. D. is [or are] entitled to the sum [or weekly payment] of from of [*insert name and address of insurers*] in respect of the amount due [or payable] to me [or to the said A. B.] as aforesaid.

4. [*Here state particulars showing that the employer has become bankrupt, or made a composition or arrangement with his creditors, or, if a company, that the company has commenced to be wound up; stating, in case of an assignment, the names and addresses of the assignees, or in case of bankruptcy, the name and address of the official receiver or other trustee, or, in case of liquidation, the name and address of the provisional or other liquidator, so far as known to the deponent.*]

5. I [or the said A. B.] claim [or claims] to have by virtue of the said Act a first charge on the sum [or weekly payment] to which the said C. D. is [or are] entitled from the said (*insurers*) as aforesaid, for the amount so due [or payable] to me [or him], and claim [or claims] that the said may be ordered to pay the said sum, or so much thereof as may be sufficient to satisfy the amount so due to me [or the said A. B.] into Court, to be invested or applied for my [or his] benefit [or, in the case of a weekly payment, that the said may be ordered to pay the said weekly payment to me [or him].

Sworn, &c.

FORM 26.

Summons to Insurers.

In the county court of , holden at .

No. of plaint.

[*Title as in Award, or Memorandum, or Certificate.*]

Insurers.

[*Insert here name, address, and description of Insurers.*]

Whereas [*recite award, or memorandum, or certificate, as in affidavit*].

And whereas the said A. B. has filed an affidavit in this Court, stating that the sum of £ [or a weekly payment of from the

day of [as the case may be] still remains due [or payable] to him from or by the said C. D. under the said award [or memorandum, or certificate] :

And that the said C. D. is [or are] entitled to the sum [or weekly payment] of from you in respect of the amount due or payable to the said A. B. as aforesaid :

And that [here repeat allegations in affidavit as to bankruptcy, composition, arrangement, or winding up].

And that the said A. B. claims by virtue of the said Act to have a first charge on the sum [or weekly payment] to which the said C. D.

is [or are] so entitled from you as aforesaid, and claims that you may be ordered to pay the said sum, or so much thereof as may be sufficient to satisfy the amount so due to the said A. B., into Court, to be invested or applied for his benefit [or, in the case of a weekly payment, that you may be ordered to pay the said weekly payment to him] :

You are therefore hereby summoned to appear at a Court to be holden at on the day of at o'clock in the noon, to show cause why an order should not be made upon you for the payment into Court of the sum to which the said C. D. is [or are] entitled from you as aforesaid or so much thereof as may be sufficient to satisfy the amount so due to the said A. B. [or for the payment by you of the said weekly payment to the said A. B.] :

And take notice, that from and after the service of this summons upon you such sum [or weekly payment] is attached to answer the sum [or weekly payment] payable to the said A. B. as aforesaid, and that if you shall pay the said sum [or weekly payment] to the said C. D. or otherwise dispose of the same you will be liable to be dealt with for contempt.

Dated this day of .

To
[the Insurers].

Registrar of the Court.

FORM 27.

Notice to Employer or his Assignee, or to Official Receiver or Trustee in Bankruptcy, or Liquidator, of Issue of Summons to Insurers.

[Title as in Summons to Insurers.]

TAKE NOTICE, that a summons, a sealed copy of which is served herewith, has been issued in the above-mentioned matter, and that the judge [or registrar] of this Court has directed that notice of the issue of such summons shall be given to you.

AND FURTHER TAKE NOTICE, that the hearing of the said summons will be proceeded with at on the day of at o'clock in the noon, and that if you do not attend, either in person or by your solicitor, at the place and time above-mentioned, such order will be made and proceedings taken as the judge may think fit.

Dated this day of .

To
[The Employer or his Assignee,
or the Official Receiver or other
Trustee in Bankruptcy, or the
Provisional or other Liquidator.]

Registrar of the Court.

FORM 28.

Order against Insurers.

[Title as in Summons.]

Whereas [recite award or memorandum or certificate, as in affidavit.]

And whereas the said A. B. having filed an affidavit [recite affidavit as in summons] the said were summoned to appear before the

Court this day and to show cause why an order should not be made on them for the payment into Court by them of the sum to which the said C. D. is [or are] entitled from them as aforesaid, or so much thereof as might be sufficient to satisfy the amount so due to the said A. B. [or for the payment by them of the said weekly payment to the said A. B. .]

Now the said having failed to appear before the Court this day [or having appeared before the Court this day and failed to show cause why they should not be ordered to make such payment as aforesaid]

It is ordered that the said do within 14 days from the date of this order pay to the registrar of this Court the sum of £ to which the said C. D. is [or are] entitled from them in respect of the amount due to the said A. B. under the said award [or memorandum or certificate].

[Or, It is ordered that the said do within 14 days from the date of this order pay to the registrar of this Court for the use of the said A. B. the sum of £, being the amount to which the said C. D. is [or are] entitled from them in respect of the weekly sum payable to the said A. B. under the said award [or memorandum or certificate] from the day of to the day of .

And that the said do thereafter until further order pay to the said A. B. the weekly sum of £, being the amount to which the said C. D. is [or are] entitled from the said in respect of the weekly sum payable to the said A. B. under the said award [or memorandum or certificate].

[Add Directions as to Investment and Application of Money ordered to be paid into Court, and as to Costs.]

FORM 29.

Execution against Insurers.

In the county court of , holden at

[Title as in Order against Insurers.]

Whereas on the day of , it was ordered [recite operative parts of order against insurers.]

And whereas default has been made in payment of the sum of £ payable into Court under the said order [or payable to the said A. B. under the said order] :

These are therefore, &c.—(as in ordinary executions).

FORM 30.

Register.

The Workmen's Compensation Act, 1897.

Register.

No. of Matter.	Title.	Date of Proceedings.	Nature.
1.	In the matter of arbitration between A. B. of &c., Applicant and C. D. & Co., Limited, of, &c., Respondents.	Oct. 11, 1898	Request for arbitration filed, and copy sent to judge.
		Oct. 20, 1898	Appointment of Mr. as arbitrator.
		Oct. 24, 1898	Copy request sent to arbitrator.
		Oct. 28, 1898	Day for arbitration fixed.
		Oct. 28, 1898	Notice of day fixed sent to applicant, and notice with copy request sent to respondents by registered post.

REGISTER—*continued.*

No. of Matter.	Title.	Date of Proceedings.	Nature.
		Nov. 4, 1898	Respondents' answer filed; copies sent to arbitrator and applicant.
		Nov. 6, 1898	Application by applicant for discovery; order made.
		Nov. 12, 1898	Respondents' affidavit filed.
		Nov. 13, 1898	Five subpoenas issued on application of applicant's solicitor.
		Nov. 16, 1898	Arbitration held; Mr. appointed as medical referee to report: further hearing adjourned.
		Nov. 23, 1898	Report of medical referee received and forwarded to arbitrator; notice given to the parties.
		Dec. 13, 1898	Further hearing. Award made as follows (enter minute of award).
		Dec. 20, 1898	Costs of applicant taxed at £
		Jan. 3, 1899	£ for costs paid into Court by respondents.
		Jan. 10, 1899	£ for costs paid to applicant's solicitor.
2.	In the matter of an agreement between A. B., of and E. F. & Co., Limited, of &c.	Jan. 7, 1899	Memorandum of agreement as to compensation, signed by solicitor of A. B., left to be recorded.
		Jan. 8, 1899	Inquiry as to genuineness sent by post to E. F. & Co., Limited.
		Jan. 10, 1899	Letter received from E. F. & Co., Limited, disputing genuineness.
		Jan. 10, 1899	Notice sent to A. B.'s solicitor, that genuineness is disputed, and that Memorandum will not be recorded without consent in writing of E. F. & Co., Limited, or order of Judge.
		Jan. 15, 1899	Application on behalf of A. B., that Memorandum be recorded.
		Jan. 31, 1899	Application heard, and order made that Memorandum be recorded with alterations.
		Feb. 2, 1899	Memorandum recorded as follows [set out Memorandum].
		Feb. 13, 1899	Costs of A. B. taxed and allowed at £
		Mar. 1, 1899	Execution issued for costs, &c., &c., &c.

We, Alfred Martineau, Henry J. Stonor, Richard Harington, William L. Selfe, and William Cecil Smyly, being the five judges of the county courts appointed for the making of Rules under section one hundred and sixty-four of the County Courts Act, 1888, having made the foregoing Rules of Court, pursuant to paragraph ten of the Second Schedule to the Workmen's Compensation Act, 1897, do hereby certify the same under our hands, and submit them to the Lord Chancellor accordingly.

Alfred Martineau.

Henry J. Stonor.

Richard Harington.

William L. Selfe.

William Cecil Smyly.

I allow these Rules,

Halsbury, C.

The 27th of May, 1898.

WORKMEN'S COMPENSATION ACT, 1897.

MEDICAL REFEREES.

REGULATIONS, DATED MAY 2, 1898, MADE BY THE SECRETARY OF STATE AND THE TREASURY AS TO THE APPOINTMENT AND PAYMENT OF MEDICAL REFEREES IN ENGLAND AND WALES.

I, the Right Honourable Sir Matthew White Ridley, Baronet, one of Her Majesty's Principal Secretaries of State, and We, the Lords Commissioners of Her Majesty's Treasury, in pursuance of the power conferred on us by the Workmen's Compensation Act, 1897, Schedule II., paragraph (13), hereby make the following regulations:

Definitions.

1. In these regulations—

- (i.) "Medical Referee" means a legally qualified medical practitioner appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1897. Sched. II. (13).
- (ii.) "Reference" means the appointment of a medical referee by a committee, arbitrator or judge to report on any matter material to any question arising in an arbitration under the Workmen's Compensation Act, 1897. Sched. II. (13).
- (iii.) "Committee" means a committee representative of an employer and his workmen, with power to settle matters under the Workmen's Compensation Act, 1897, in the case of the employer and workmen. Sched. II. (1).
- (iv.) "Agreed Arbitrator" means a single arbitrator agreed on by the parties to settle any matter which under the Workmen's Compensation Act, 1897, is to be settled by arbitration. Sched. II. (2).
- (v.) "Appointed Arbitrator" means a single arbitrator appointed by the judge. Sched. II. (2).
- (vi.) "Judge" means county court judge.
- (vii.) The words "district in which the case arises" mean the county court district in which all the parties concerned reside, or, if they reside in different districts, the district in which the accident occurred, subject to any transfer made under rules of court. Sched. II. (9).

Conditions of Reference.

2. Before making any reference, the committee, arbitrator, or judge shall be satisfied, after hearing all medical evidence tendered by either side, that such evidence is either conflicting or insufficient on some matter which seems material to a question arising in the arbitration, and that it is desirable to obtain a report from a medical referee on such matter.

Form and Mode of Reference.

Form A.

3. Every reference shall be made in writing and shall state the matter on which the report of the medical referee is required, and the question arising in the arbitration to which such matter seems to be material. Such reference shall be in accordance with the form prescribed in the schedule to these regulations, or as near thereto as may be.

The reference shall be accompanied by a general statement of the medical evidence given on behalf of the parties; and if such evidence has been given before a committee or an agreed arbitrator, each medical witness shall sign the statement of his evidence, and may add any necessary explanation or correction.

Form B.

4. On making the reference to the medical referee, the committee, arbitrator or judge shall make an order in the form prescribed in the schedule, directing the injured workman to submit himself for examination by the medical referee. Before making such order they shall inquire whether he is in a fit condition to travel for the purpose of examination, and if satisfied that he is in a fit condition they shall by the same order direct him to attend at such time and place as the referee may fix.

It shall be the duty of the injured workman to obey any such order.

If the committee, arbitrator or judge is satisfied that the workman is not in a fit condition to travel, they shall so state in the reference.

5. The reference shall be signed, if made by a committee, by the chairman and secretary of the committee; if made by an agreed arbitrator, by the arbitrator; if made by a judge or an appointed arbitrator, by the judge or arbitrator, or by the registrar of the county court in which the arbitration is pending.

6. Where there has been a previous reference in any case, any subsequent reference in the same case shall, if possible, be accompanied by the previous report of the medical referee.

7. Where the reference is made by a committee or agreed arbitrator, it shall be forwarded to the registrar of the county court of the district in which the case arises.

Selection of Medical Referee.

8.—(1.) In the case of a reference by a committee or agreed arbitrator the medical referee shall be one of those appointed by the Secretary of State for the county court circuit which includes the district in which the case arises, and shall, except as provided in Regulation 10.

(a) If the circuit has been sub-divided and medical referees have been appointed for each sub-division, be one of those appointed for the sub-division which includes the district in which the case arises;

(b) If a rota has been established either for the circuit or for a sub-division of the circuit, be selected in accordance with the rota.

(2.) In the case of a reference by a judge or by an appointed arbitrator, the medical referee shall be one of those appointed by the Secretary of State for the circuit.

9. It shall be competent for a committee or an agreed arbitrator, without naming a medical referee, to address the reference in general

terms to "one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1897."

10. Where there has been a previous reference in any case, any subsequent reference in the same case shall, if possible, be made to the same referee.

Duties of Registrar.

11.—(1.) In the case of a reference by a committee or agreed arbitrator, the registrar on receiving the reference—

- (a) Shall see that the reference is in accordance with these regulations, and if it is not shall return it for amendment ;
- (b) Shall, if no medical referee is named in the reference, insert the name of the medical referee proper to be appointed ;
- (c) Shall, when the reference is in accordance with these regulations, countersign and seal it, and forward it forthwith to the medical referee.

(2.) In the case of a reference by a judge or an appointed arbitrator, the registrar of the court in which the arbitration is pending shall sign (or countersign) and seal it, and forward it forthwith to the medical referee.

12. The registrar shall keep a record in the form prescribed in the schedule to these regulations of all references forwarded by him, and shall send the same to the Secretary of State at the end of each quarter. Form D.

13. The registrar, on receiving a report from a medical referee under Regulation 17, shall forthwith file a copy at the court and transmit the report to the committee, arbitrator or judge by whom the reference was made.

If the committee, arbitrator, or judge shall direct that the parties be at liberty to inspect the report, the registrar shall on receiving notice of such direction permit such inspection to be made during office hours, and shall on the application and at the cost of any party furnish him with a copy of the report or allow him to take a copy thereof.

14. When a medical referee attends under Regulation 19, the registrar shall certify in the record of references which he is required to keep under Regulation 12 that the attendance was at the special request of the judge or appointed arbitrator.

Report of Medical Referee.

15. The medical referee shall not accept any reference unless signed by the judge, appointed arbitrator, or registrar, and sealed with the seal of the county court.

16. The medical referee shall, on receipt of a reference duly signed, appoint a time and, in cases where the injured workman is able to travel, a place for the examination of the workman, and shall send him notice accordingly. Form C.

17. The medical referee shall give his report in writing, and shall forward it to the registrar from whom he received the reference.

18. The committee, arbitrator or judge may, by request signed and forwarded in the same manner as the reference, remit the report to the medical referee for further statement on any matter to be specified in such request.

Personal Attendance of Medical Referee.

19. In any case of special difficulty the judge, or appointed arbitrator, may require the attendance of the medical referee at any proceedings in the arbitration subsequent to the receipt of the report, at a date and hour to be arranged, and the medical referee shall attend accordingly, but this regulation shall not authorise the medical referee being called as a witness.

Fees.

20. The following shall be the scale of fees to be paid to the medical referees :—

- (i.) For a first reference, to include examination of the injured workman and written report ... 2 guineas.
- (ii.) For a further statement under Regulation 18 on any matter not covered by the original reference... 1 guinea.
- (iii.) For a second or subsequent reference to the same referee in a further arbitration on the same case, to include examination, if necessary, and written report ... 1 guinea.
- (iv.) Where a medical referee attends at the request of the county court judge or appointed arbitrator, for such attendance ... 3 guineas.
- (v.) Where in order to examine the injured workman or to attend on the county court judge or arbitrator the medical referee is compelled to travel to a place distant more than 2 miles from his residence or such other centre as may be prescribed by the Secretary of State, in addition to the above fees—5s. for each mile distant from such residence or centre.

Form E.

21. The medical referee shall send to the Home Office at the end of each quarter a statement, in the form prescribed in the schedule to these regulations, of the fees due to him for the quarter under these regulations.

22. In cases where a claim is made under Regulation 20 (v.) in respect of an examination of an injured workman, the medical referee, in submitting his quarterly statement under Regulation 21, shall certify the distance of the place where the examination was made from his residence or other prescribed centre.

23. These regulations shall come into force on the 1st day of July, 1898, and shall apply to England and Wales.

M. W. Ridley,

One of Her Majesty's Principal
Secretaries of State.

H. T. Anstruther,

W. H. Fisher,

Two of the Lords Commissioners of
Her Majesty's Treasury.

2nd May, 1898.

(FORM A.)

Reference to a Medical Referee.

In the matter of the Workmen's Compensation Act, 1897,
and

In the matter of an Arbitration between—

A. B.

Address
Description

Applicant,

C. D.

Address
Description

Respondent.

As the
case may
be

- (a) We, a committee representative of and his workmen, and empowered to arbitrate in the matter arising under the Workmen's Compensation Act between A. B. and C. D. ;
- (b) I, an arbitrator agreed upon by A. B. and C. D. to arbitrate in the matter arising between them under the Workmen's Compensation Act, 1897 ;
- (c) I, judge of county courts ;
- (d) I, arbitrator appointed by a judge of county courts,

having heard the evidence tendered by both parties, hereby certify that

in our (*or my*) opinion the medical evidence given before us (*or me*) is conflicting (*or insufficient*) on a matter which seems to us (*or me*) to be material to a question arising in the above-mentioned arbitration, and that it is desirable to obtain a report from a medical referee on such matter, as follows:—

(A) On the day of personal injury was (*or is alleged to have been*) caused to* by accident arising out of and in the course of his employment, under the following circumstances:—

†

(B) The matter on which we are (*or I am*) satisfied that it is desirable to obtain a report is—

(C) Such matter seems to be material to the following questions arising in the arbitration, viz.:—

We (*or I*) therefore appoint ‡ one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1897, to examine the said § and to report to us (*or me*) on the matter specified above.

A statement of the medical evidence given before us (*or me*) is appended.

We are (*or I am*) satisfied that the said § who is now at , is in a fit condition to travel for the purpose of being examined, and he has been directed to attend on the referee for examination at such time and place as shall be fixed by the referee; *or* does not appear to be in a fit condition to travel for the purpose of being examined.

The referee is requested to forward his report to—

The Registrar,

County Court Office,

on or before the day of
Dated this day of
(Signed)

or On behalf of the Committee

Chairman)
Secretary) of Committee.

Signature of Registrar and
Seal of Court.

A previous reference was made to a medical referee in this case on the , 189 , and a copy of the report then given is attached.

(FORM B.)

Order on an injured Workman to submit himself for Examination by Medical Referee.

(Title as in Reference.)

To A. B.

of

TAKE NOTICE—

Address.
Description.

That the Committee (*or arbitrator, or judge*) have (*or has*) appointed one of the medical referees under the Workmen's Compensation Act, 1897, to examine you for the purposes of the above-mentioned arbitration, and to report to them (*or him*).

You are hereby required to submit yourself for examination by such referee,* and to attend for that purpose at such time and place as may be fixed by him.

Dated this day of

(To be signed in the same manner as reference.)

M.S.

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* Insert name of injured workman.

† Here state the facts of the accident as ascertained from the evidence.

‡ The name may, under Regulation 9, be left in blank to be inserted by the Registrar.

§ Insert name of injured workman.

** For signature of judge or arbitrator.

* Strike out from "and to attend" when injured workman does not appear to be in a fit condition to travel.

REGULATIONS AS TO MEDICAL REFEREES.

(FORM C.)

*Notice by Medical Referee to injured Workman,
Workmen's Compensation Act, 1897.*

To A. B.

I hereby give you notice that I have been appointed to examine and report on your case under the above-named Act, and that I propose to make such examination at _____ on the _____ day of _____ at _____ o'clock.

(Signed)

Medical Referee.

(FORM D.)

Record of References to be kept by Registrar.

County Court Circuit _____ District _____ Name of Registrar _____
For quarter ended _____

Number of Reference.	Names of Parties.	Workman's Employment.	Date on which Reference received or made.	By whom made.†	Whether workman directed to attend on Medical Referee, or not.	Medical Referee appointed.	Date and number of previous Reference in same case, if any.

† Here say whether committee, agreed arbitrator, county court judge, or appointed arbitrator.

Endorsement
to be made
on back of
form.

I hereby certify that the medical referee attended at _____, on _____, with respect to reference No. _____, at the special request of _____.

(FORM E.)

Medical Referee's Statement of Fees.

Number	Names of Parties.	Date on which Reference received.	Registrar from whom received.	Date and place of Examination.	Date on which Report sent.	Date of attendance, if any, on Judge or Arbitrator.	Amount of Fees under each of the headings in Regulation 20.				
							(i.)	(ii.)	(iii.)	(iv.)	(v.)
							£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
1.	A. B. and C. D.	10 July, 1898.									
2.	E. F. and G. H.	6 Sept., 1896.									
							£				

Total ... £ s. d.

† Endorsement
to be made
on back of
statement.

† I hereby certify that I examined the applicant _____, at _____, which is distant _____ miles from my residence or prescribed centre.

(Signed)

THE DANGEROUS PERFORMANCES ACT, 1897.

60 & 61 VICT. c. 52.

An Act to extend the Age under which the Employment of Young Persons in Dangerous Performances is prohibited.

[6th August, 1897.]

Be it enacted &c., as follows :—

1. The Children's Dangerous Performances Act, 1879 (*a*), shall apply in the case of any male young person under the age of sixteen years, and any female young person under the age of eighteen years, in like manner as it applies in the case of a child under the age of fourteen years.

2.—(1.) Except where an accident causing actual bodily harm occurs to any child or young person, no prosecution or other proceeding shall be instituted for an offence against the Children's Dangerous Performances Act, 1879, as amended by this Act, without the consent in writing of the chief officer of police of the police area in which the offence is committed.

(2.) For the purposes of this section the expression "chief officer of police"—

(a) with respect to any place in England other than the City of London, has the meaning assigned to it by the Police Act, 1890 ;

(b) with respect to the City of London, means the Commissioners of City Police ;

(c) with respect to Scotland, has the meaning assigned to it by the Police (Scotland) Act, 1890 ;

(d) with respect to Ireland, means in the police district of Dublin metropolis either of the Commissioners of Police for that district and elsewhere the district inspector of the Royal Irish Constabulary.

3. This Act may be cited as the Dangerous Performances Act, 1897, and the Children's Dangerous Performances Act, 1879, and this Act may be cited together as the Dangerous Performances Acts, 1879 and 1897.

Extension to young persons of 42 & 43 Vict. c. 34.

Restrictions on prosecutions

53 & 54 Vict. c. 45.

53 & 54 Vict. c. 67.

Short title.

THE CHAFF-CUTTING MACHINES (ACCIDENTS) ACT, 1897.

60 & 61 VICT. c. 60.

An Act for the Prevention of Accidents by Chaff-Cutting Machines.

[6th August, 1897.]

Be it enacted, &c., as follows :—

1. The feeding mouth or box of every chaff-cutting machine which is worked by any motive power other than manual labour shall, so far as is reasonably practicable and consistent with the due and efficient working of the machine, be of such construction or fitted with such apparatus or contrivance as to prevent the hand or arm of the person feeding the machine from being drawn between the rollers to the knives.

2. The fly-wheel and knives of every chaff-cutting machine which is worked by any motive power other than manual labour, shall, so far as is

Feeding mouth to have fittings to secure safety.

Fly-wheel and knives to be securely fenced.

Penalty for offences.

In prosecutions, owner of machine to prove he has taken proper precautions. Defendant and husband or wife to be competent witnesses. Constable may enter premises for inspecting machine. Commencement of Act. Short title.

reasonably practicable and consistent with the due and efficient working of the machine, be kept sufficiently and securely fenced at all times during the working thereof.

3. If any person permits to be worked any chaff-cutting machine belonging to him, or used for his service or benefit, which does not comply with the requirements of this Act,

or if any foreman or other person in charge of any chaff-cutting machine, which does not comply with the requirements of this Act, works it or permits it to be worked,

or if any person, during the working of any chaff-cutting machine, unnecessarily and without due cause removes any guard or thing provided in compliance with the requirements of this Act,

Every person so offending on any day shall be liable on summary conviction to a penalty not exceeding five pounds.

4. If in the prosecution of any person to whom the chaff-cutting machine belongs, or for whose service or benefit it is used, it is shown that the machine did not during the working thereof comply with the requirements of this Act, such person shall be deemed to have permitted the same unless he satisfy the court that he took all reasonable precautions to ensure compliance with the requirements of this Act.

5. Every person charged with an offence under this Act before any court of criminal jurisdiction, and the husband or wife of the person so charged, shall be competent but not compellable witnesses on every hearing at every stage of such charge.

6. Any constable acting upon the instruction of an officer of police not below the grade of inspector may at any time enter on any premises on which he has reasonable cause to believe that a chaff-cutting machine which does not comply with the requirements of this Act is being worked for the purpose of inspecting such machine.

7. This Act shall not come into operation until the first day of August, one thousand eight hundred and ninety-eight.

8. This Act may be cited as the Chaff-Cutting Machines (Accidents) Act, 1897.

THE SEATS FOR SHOP ASSISTANTS ACT, 1899.

62 & 63 VICT. c. 21.

An Act to provide for Seats being supplied for the use of Shop Assistants. [9th August, 1899.]

Be it enacted, &c., as follows:—

Seats to be provided in shops, &c.

1. In all rooms of a shop, or other premises where goods are actually retained to the public, and where female assistants are employed for the retailing of goods to the public, the employer carrying on business in such premises shall provide seats behind the counter, or in such other position as may be suitable for the purpose, and such seats shall be in the proportion of not less than one seat to every three female assistants employed in each room.

Penalty.

2. Any person failing to comply with the provisions of this Act shall be liable, on summary conviction, for a first offence to a fine not exceeding three pounds, and for a second or subsequent offence to a fine not less than one pound and not exceeding five pounds.

Commencement of Act.

3. This Act shall come into force on the first day of January one thousand nine hundred.

Construction and short title.

4. This Act shall be read and construed as one with the Shop Hours Acts, 1892 to 1895, and may be cited separately as the Seats for Shop Assistants Act, 1899.

THE MINES (PROHIBITION OF CHILD LABOUR UNDERGROUND) ACT, 1900.

63 & 64 VICT. c. 21.

An Act to prohibit Child Labour Underground in Mines.

[30th July, 1900.]

Be it enacted, &c., as follows :—

1.—(1.) A boy under the age of thirteen years shall not be employed in or allowed to be for the purpose of employment in any mine below ground, and accordingly sections four and five of the Coal Mines Regulation Act, 1887, and section four of the Metalliferous Mines Regulation Act, 1872, shall be read and have effect as if for the word “twelve” the word “thirteen” were substituted therein.

(2.) Nothing in this section shall apply to any boy who has been lawfully employed in any mine below ground before the passing of this Act.

2. This Act may be cited as the Mines (Prohibition of Child Labour Underground) Act, 1900.

Prohibition of employment of boys under thirteen below ground.
50 & 51 Vict. c. 58.
35 & 36 Vict. c. 77.

Short title.

THE WORKMEN'S COMPENSATION ACT, 1900.

63 & 64 VICT. c. 22.

An Act to extend the benefits of the Workmen's Compensation Act, 1897, to Workmen in Agriculture.

[30th July, 1900.]

Be it enacted, &c., as follows :—

1.—(1.) From and after the commencement of this Act, the Workmen's Compensation Act, 1897, shall apply to the employment of workmen in agriculture by any employer who habitually employs one or more workmen in such employment.

(2.) Where any such employer agrees with a contractor for the execution by or under that contractor of any work in agriculture, section four of the Workmen's Compensation Act, 1897, shall apply in respect of any workman employed in such work as if that employer were an undertaker within the meaning of that Act.

Provided that, where the contractor provides and uses machinery driven by mechanical power for the purpose of threshing, ploughing, or other agricultural work, he, and he alone, shall be liable under this Act to pay compensation to any workman employed by him on such work.

(3.) Where any workman is employed by the same employer mainly in agricultural but partly or occasionally in other work, this Act shall apply also to the employment of the workman in such other work.

The expression “agriculture” includes horticulture, forestry, and the use of land for any purpose of husbandry, inclusive of the keeping or breeding of live stock, poultry, or bees, and the growth of fruit and vegetables.

2. This Act may be cited as the Workmen's Compensation Act, 1900, and shall be read as one with the Workmen's Compensation Act, 1897, and that Act and this Act may be cited together as the Workmen's Compensation Acts, 1897 and 1900.

3. This Act shall come into operation on the first day of July one thousand nine hundred and one.

Application of 60 & 61 Vict. c. 37, to agricultural work.

Short title.

Commence-
ment of Act.

FACTORY AND WORKSHOP ACT, 1901.

1 EDW. 7, c. 22.

An Act to consolidate with Amendments the Factory and Workshop Acts (b). [17th August, 1901.]

PART I.—HEALTH AND SAFETY.

(i.) *Health.*

Be it enacted, &c., as follows :—

Sanitary
condition of
factory.

1.—(1.) The following provisions shall apply to every factory as defined by this Act, except a domestic factory :—

- (a) It must be kept in a cleanly state ;
- (b) It must be kept free from effluvia arising from any drain, water-closet, earthcloset, privy, urinal, or other nuisance ;
- (c) It must not be so overcrowded while work is carried on therein as to be dangerous or injurious to the health of the persons employed therein ;
- (d) It must be ventilated in such a manner as to render harmless, so far as is practicable, all the gases, vapours, dust, or other impurities generated in the course of the manufacturing process or handicraft carried on therein, that may be injurious to health.

38 & 39 Vict.
c. 55.

(2.) The provisions of section ninety-one of the Public Health Act, 1875, with respect to a factory, workshop, or workplace not kept in a cleanly state, or not ventilated, or overcrowded, shall not apply to any factory to which this section applies.

(3.) For the purpose of securing the observance of the requirements in this section as to cleanliness in factories, all the inside walls of the rooms of a factory, and all the ceilings or tops of those rooms (whether those walls, ceilings, or tops are plastered or not), and all the passages and staircases of a factory, if they have not been painted with oil or varnished once at least within seven years, shall (subject to any special exceptions made in pursuance of this section) be limewashed once at least within every fourteen months, to date from the time when they were last limewashed ; and if they have been so painted or varnished shall be washed with hot water and soap once at least within every fourteen months, to date from the time when they were last washed.

(4.) Where it appears to the Secretary of State that in any class of factories, or parts thereof, the provisions of this section with respect to limewashing or washing are not required for the purpose of securing therein the observance of the requirements of this Act as to cleanliness, or are by reason of special circumstances inapplicable, he may, if he thinks fit, by Special Order grant to that class of factories, or parts thereof, a special exception that the said provisions shall not apply thereto.

(5.) A factory in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

(b) This Act contains no provision as to references in previous legislation to the various Factory Acts repealed by this Act being interpreted as referring to the present Act. But by sect. 38 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), it is provided as follows : “ (1.) Where this Act or any Act passed after the commencement of this Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.”

2.—(1.) The provisions of section ninety-one of the Public Health Act, 1875, with respect to a factory, workshop, or workplace, not kept in a cleanly state, or not ventilated, or overcrowded, shall apply to every factory, workshop, and workplace, except any factory to which the last preceding section applies.

Sanitary condition of workshops and workplaces.
38 & 39 Vict. c. 55.

(2.) Every workshop and every workplace within the meaning of the Public Health Act, 1875, must be kept free from effluvia arising from any drain, watercloset, earthcloset, privy, urinal, or other nuisance, and unless so kept shall be deemed to be a nuisance liable to be dealt with summarily under the law relating to public health.

(3.) Where on the certificate of a medical officer of health or inspector of nuisances it appears to any district council that the limewashing, cleansing, or purifying, of any such workshop, or of any part thereof, is necessary for the health of the persons employed therein, the council shall give notice in writing to the owner or occupier of the workshop to limewash, cleanse, or purify the same, or part thereof, as the case may require.

(4.) If the person to whom notice is so given fails to comply therewith within the time therein specified, he shall be liable to a fine not exceeding ten shillings for every day during which he continues to make default, and the council may, if they think fit, cause the workshop or part to be limewashed, cleansed, or purified, and may recover in a summary manner the expenses incurred by them in so doing from the person in default.

(5.) This section shall not apply to any workshop or workplace to which the Public Health (London) Act, 1891, applies.

51 & 55 Vict. c. 76.

3.—(1.) A factory shall for the purposes of this Act, and a workshop shall for the purposes of the law relating to public health, be deemed to be so overcrowded as to be dangerous or injurious to the health of the persons employed therein, if the number of cubic feet of space in any room therein bears to the number of persons employed at one time in the room a proportion less than two hundred and fifty (c), or, during any period of overtime, four hundred, cubic feet of space to every person.

Over-crowding of factory or workshop.

(2.) Provided that the Secretary of State may, by Special Order, modify this proportion for any period during which artificial light other than electric light is employed for illuminating purposes, and may, by like order, as regards any particular manufacturing process or handicraft, substitute for the said figures of two hundred and fifty and four hundred respectively any higher figures, and thereupon this section shall have effect as modified by the order.

(3.) Where a workshop or workplace, not being a domestic workshop, is occupied by day as a workshop and by night as a sleeping apartment, the Secretary of State may by Special Order modify the proportion of cubic feet of space prescribed by this section, and substitute therefor any higher figures, and thereupon this section shall have effect as modified by the order.

(4.) There shall be affixed in every factory and workshop a notice specifying the number of persons who may be employed in each room of the factory or workshop by virtue of this section.

4.—(1.) If the Secretary of State is satisfied that the provisions of this Act, or of the law relating to public health in so far as it affects factories, workshops, and workplaces, have not been carried out by any district council, he may, by order, authorise an inspector to take, during such period as may be mentioned in the order, such steps as appear necessary or proper for enforcing those provisions.

Power of Secretary of State to act in default of local authority.

(2.) An inspector authorised in pursuance of this section shall, for the purpose of his duties thereunder, have the same powers with respect to workshops and workplaces as he has with respect to factories, and he may, for that purpose, take the like proceedings for enforcing the provisions of this Act or of the law relating to public health, or for

(c) Altered under sub-sect. 3 to four hundred.

punishing or remedying any default, as might be taken by the district council; and he shall be entitled to recover from the district council all such expenses in and about any proceedings as he may incur, and as are not recovered from any other person.

Powers of
inspector as
to sanitary
defects in
factory or
workshop
remediable
by sanitary
authority.

5.—(5.) Where it appears to an inspector that any act, neglect, or default, in relation to any drain, watercloset, earthcloset, privy, ashpit, water-supply, nuisance, or other matter in a factory or workshop, is punishable or remediable under the law relating to public health, but not under this Act, that inspector shall give notice in writing of the act, neglect, or default, to the district council in whose district the factory or workshop is situate, and it shall be the duty of the district council to make such inquiry into the subject of the notice, and take such action thereon, as seems to that council proper for the purpose of enforcing the law, and to inform the inspector of the proceedings taken in consequence of the notice.

(2.) An inspector may, for the purposes of this section, take with him into a factory or a workshop a medical officer of health, inspector of nuisances, or other officer of the district council.

(3.) Where notice of an act, neglect, or default, is given by an inspector under this section to a district council, and proceedings are not taken within one month for punishing or remedying the act, neglect, or default, the inspector may take the like proceedings for punishing or remedying the same as the district council might have taken, and shall be entitled to recover from the district council all such expenses in and about the proceedings as the inspector incurs and as are not recovered from any other person, and have not been incurred in any unsuccessful proceedings (*d*).

Temperature
in factories
and work-
shops.

6.—(1.) In every factory and workshop adequate measures must be taken for securing and maintaining a reasonable temperature in each room in which any person is employed, but the measures so taken must not interfere with the purity of the air of any room in which any person is employed.

(2.) The Secretary of State may, by Special Order, direct with respect to any class of factories or workshops that thermometers be provided, maintained, and kept in working order, in such place and position as may be specified in the order.

(3.) A factory or workshop in which there is any contravention of this section, or of any order under this section, shall be deemed not to be kept in conformity with this Act.

Ventilation.

7.—(1.) In every room in any factory or workshop sufficient means of ventilation shall be provided, and sufficient ventilation shall be maintained.

(2.) The Secretary of State may, by Special Order, prescribe a standard of sufficient ventilation for any class of factories or workshops, and that standard shall be observed in all factories and workshops of that class, and an order made under this power may supersede any

(*d*) This corresponds with sect. 2 (2) of the Factory and Workshop Act, 1891. In *Tracey v. Pretty*, (1901) 1 K. B. 444, an inspector gave notice to the sanitary authority of a deficiency of sanitary accommodation in a factory, and on the sanitary authority failing to take any proceedings for remedying the matter, gave notice to the factory owner under the Act of 1891 and under sect. 22 of the Public Health Act, 1890, requiring him to erect certain specified sanitary conveniences. The owner failed to comply, and the inspector summoned him before the justices in petty sessions. The King's Bench Division held that the justices had no jurisdiction to inquire into the suitability or sufficiency (see sect. 9) of the sanitary accommodation existing at the factory or of that required by the inspector. *Scoble*, an appeal lies to quarter sessions under sect. 7 of the Public Health Act, 1890, from the requirements of a factory inspector in such a case.

provision of this Act or order of the Secretary of State with respect to ventilation in cotton cloth factories.

(3.) A factory in which there is a contravention of the provisions of this section shall be deemed not to be kept in conformity with this Act, and a workshop in which there is a contravention of the provisions of this section shall be deemed to be a nuisance liable to be dealt with summarily under the law relating to public health.

(4.) If the occupier of a factory or workshop (including a cotton cloth factory in which humidity of the atmosphere is artificially produced) alleges that the whole or part of the expenses of providing the means of ventilation required by this Act ought to be borne by the owner, he may by complaint apply to a court of summary jurisdiction, and that court may make such order concerning the expenses or their apportionment as appears to the court to be just and equitable under the circumstances of the case, regard being had to the terms of any contract between the parties.

8.—(1.) In every factory or workshop or part thereof in which any process is carried on which renders the floor liable to be wet to such an extent that the wet is capable of being removed by drainage, adequate means shall be provided for draining off the wet.

Drainage of floors.

(2.) A factory in which there is a contravention of the provisions of this section shall be deemed not to be kept in conformity with this Act, and a workshop in which there is a contravention of the provisions of this section shall be deemed to be a nuisance liable to be dealt with summarily under the law relating to public health.

9.—(1.) Every factory and workshop must be provided with sufficient and suitable accommodation in the way of sanitary conveniences, regard being had to the number of persons employed in or in attendance at the factory or workshop, and also where persons of both sexes are or are intended to be employed or in attendance, with proper separate accommodation for persons of each sex.

Sanitary conveniences in factories and workshops.

(2.) The Secretary of State shall, by Special Order, determine what is sufficient and suitable accommodation within the meaning of this section.

(3.) A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

(4.) This section does not apply to the administrative county of London, or to any place where section twenty-two of the Public Health Acts Amendment Act, 1890, is in force.

53 & 54 Vict. c. 59.

(ii.) *Safety.*

10.—(1.) With respect to the fencing of machinery in a factory the following provisions shall have effect (*e*):—

Fencing of machinery.

- (a) Every hoist or teagle, and every fly-wheel directly connected with the steam or water or other mechanical power, whether in the engine-house or not, and every part of any water-wheel or engine worked by any such power, must be securely fenced; and
- (b) Every wheel-race not otherwise secured must be securely fenced close to the edge of the wheel-race; and
- (c) All dangerous parts of the machinery (*f*), and every part of the

(*e*) This section corresponds with sect. 5 of the Factory and Workshop Act, 1878. By sect. 156, *post*, “machinery” includes any driving strap or band. A contravention of this section will subject the occupier to a fine: sects. 135 and 136. A person injured in consequence of a breach of the duty imposed by this section may bring an action for damages, and in such an action the defendant cannot raise the defence of common employment: *Groves v. Lord Wimborne*, (1898) 2 Q. B. 402.

(*f*) The words “all dangerous parts of the machinery” are not limited to mean only the machinery supplying or conveying motive power, but apply

mill-gearing (*g*), must either be securely fenced, or be in such position or of such construction as to be equally safe to every person employed or working in the factory as it would be if it were securely fenced; and

- (d) All fencing must be constantly maintained in an efficient state while the parts required to be fenced are in motion or use, except where they are under repair or under examination in connexion with repair, or are necessarily exposed for the purpose of cleaning or lubricating or for altering the gearing or arrangements of the parts of the machine.

(2.) A factory in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

Steam boilers.

11.—(1.) Every steam boiler used for generating steam in a factory or workshop, or in any place to which any of the provisions of this Act apply, must, whether separate or one of a range—

- (a) have attached to it a proper safety valve and a proper steam gauge and water gauge to show the pressure of steam and the height of water in the boiler; and

- (b) be examined thoroughly by a competent person at least once in every fourteen months.

(2.) Every such boiler, safety valve, steam gauge, and water gauge must be maintained in proper condition.

(3.) A report of the result of every such examination in the prescribed form, containing the prescribed particulars, shall within fourteen days be entered into or attached to the general register of the factory or workshop, and the report shall be signed by the person making the examination, and, if that person is an inspector of a boiler-inspecting company or association, by the chief engineer of the company or association.

(4.) A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

(5.) This section shall not apply to the boiler of any locomotive which belongs to and is used by any railway company, or to any boiler belonging to or exclusively used in the service of his Majesty.

(6.) For the purposes of this section, the whole of a tenement factory or workshop shall be deemed to be one factory or workshop, and the owner shall be substituted for the occupier, and he shall register the report referred to in this section.

Regulations
as to self-
acting
machines.

12.—(1.) In a factory erected on or after the first day of January one thousand eight hundred and ninety-six, the traversing carriage of any self-acting machine must not be allowed to run out within a distance of eighteen inches from any fixed structure not being part of the machine, if the space over which it runs out is a space over which any person is liable to pass, whether in the course of his employment or otherwise. Provided that nothing in this sub-section shall prevent any portion of the traversing carriage of any self-acting cotton spinning or woollen spinning machine being allowed to run out within a distance of twelve inches from any part of the head stock of another self-acting cotton spinning or woollen spinning machine.

(2.) A person employed in a factory must not be allowed (*h*) to be in the space between the fixed and the traversing parts of a self-acting machine unless the machine is stopped with the traversing part on the

to all the machinery in the factory: *Redgrave v. Lloyd*, (1895) 1 Q. B. 876. Machinery is "dangerous" if in the ordinary course of human affairs danger may reasonably be anticipated from its use without protection; and for that purpose the chances of the carelessness of workmen and other matters must be taken into consideration: *HANDLE v. Burtchistle*, (1897) 1 Q. B. 192 (shuttle flying accidentally out of shuttle race).

(*g*) See the definition in sect. 156.

(*h*) *Crabtree v. Fern Spinning Co.*, 85 L. T. Rep. 549.

outward run, but for the purpose of this provision the space in front of a self-acting machine shall not be included in the space aforesaid.

(3.) A woman, young person, or child must not be allowed to work between the fixed and traversing part of any self-acting machine while the machine is in motion by the action of steam, water, or other mechanical power.

(4.) A factory in which a traversing carriage is allowed to run out in contravention of this section shall be deemed not to be kept in conformity with this Act, and any person allowed to be in the space aforesaid or to work in contravention of this section shall be deemed to be employed contrary to the provisions of this Act.

13.—(1.) A child must not be allowed to clean in any factory—

(a) any part of any machinery; or

(b) any place under any machinery other than overhead mill gearing, while the machinery is in motion by the aid of steam, water, or other mechanical power.

(2.) A young person must not be allowed to clean any dangerous part of the machinery in a factory while the machinery is in motion by the aid of steam, water, or other mechanical power; and for this purpose such parts of the machinery shall, unless the contrary is proved, be presumed to be dangerous as are so notified by an inspector to the occupier of the factory.

(3.) A woman or young person must not be allowed to clean such part of the machinery in a factory as is mill-gearing while the machinery is in motion for the purpose of propelling any part of the manufacturing machinery.

(4.) A woman, young person, or child, allowed to clean in contravention of this section, shall be deemed to be employed contrary to the provisions of this Act.

14.—(1.) Every factory of which the construction was not commenced on or before the first day of January one thousand eight hundred and ninety-two, and in which more than forty persons are employed, and every workshop of which the construction was not commenced before the first day of January one thousand eight hundred and ninety-six, and in which more than forty persons are employed, must be furnished with a certificate from the district council of the district in which the factory or workshop is situate that the factory or workshop is provided with such means of escape in case of fire for the persons employed therein as can reasonably be required under the circumstances of each case, and if the factory or workshop is not so furnished it shall be deemed not to be kept in conformity with this Act; and it shall be the duty of the council to examine every such factory and workshop, and, on being satisfied that the factory or workshop is so provided, to give such a certificate as aforesaid. The certificate must specify in detail the means of escape so provided.

(2.) With respect to all factories and workshops to which the foregoing provisions of this section do not apply, and in which more than forty persons are employed, it shall be the duty of the district council of every district from time to time to ascertain whether all such factories and workshops within their district are provided with such means of escape as aforesaid, and, in the case of any factory or workshop which is not so provided, to serve on the owner of the factory or workshop a notice in writing specifying the measures necessary for providing such means of escape as aforesaid, and requiring him to carry them out before a specified date, and thereupon the owner shall, notwithstanding any agreement with the occupier, have power to take such steps as are necessary for complying with the requirements, and unless the requirements are complied with, the owner shall be liable to a fine not exceeding one pound for every day that the non-compliance continues.

(3.) In case of a difference of opinion between the owner of the factory or workshop and the council under the last foregoing sub-section,

Restrictions
on cleaning
when
machinery
is in motion.

Provision of
means of
escape in
case of fire.

the difference shall, on the application of either party, to be made within one month after the time when the difference arises, be referred to arbitration, and thereupon the provisions of the First Schedule to this Act shall have effect, and the award on the arbitration shall be binding on the parties thereto, and the notice of the council shall be discharged, amended, or confirmed in accordance with the award.

(4.) If the owner alleges that the occupier of the factory or workshop ought to bear or contribute to the expenses of complying with the requirement, he may apply to the county court having jurisdiction where the factory or workshop is situate, and thereupon the county court, after hearing the occupier, may make such order as appears to the court just and equitable under all the circumstances of the case.

(5.) For the purpose of enforcing the foregoing provisions of this section, an inspector may give the like notice and take the like proceedings as under the foregoing provisions of this Act with respect to matters punishable or remediable under the law relating to public health, but not under this Act, and those provisions shall apply accordingly.

(6.) The means of escape in case of fire provided in any factory or workshop shall be maintained in good condition and free from obstruction, and if it is not so maintained the factory or workshop shall be deemed not to be kept in conformity with this Act.

(7.) For the purposes of this section the whole of a tenement factory or workshop shall be deemed to be one factory or workshop, and the owner shall be substituted for the occupier.

(8.) All expenses incurred by a district council in the execution of this section shall be defrayed—

(a) In the case of an urban district council, as part of their expenses of the general execution of the Public Health Act, 1875; and

(b) In the case of a rural district council, as special expenses incurred in the execution of the Public Health Act, 1875;

and those expenses shall be charged to the contributory place in which the factory or workshop is situate.

15. Every district council shall, in addition to any powers which they possess with reference to the prevention of fire, have power to make byelaws providing for means of escape from fire in the case of any factory or workshop, and sections one hundred and eighty-two to one hundred and eighty-six of the Public Health Act, 1875, shall apply to any byelaws so made.

16.—(1.) While any person employed in a factory or workshop is within the factory or workshop for the purpose of employment or meals, the doors of the factory or workshop, and of any room therein in which any such person is, must not be locked or bolted or fastened in such a manner that they cannot be easily and immediately opened from the inside.

(2.) In every factory or workshop the construction of which was not commenced before the first day of January one thousand eight hundred and ninety-six, the doors of each room in which more persons than ten are employed, shall, except in the case of sliding doors, be constructed so as to open outwards.

(3.) A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

17.—(1.) A court of summary jurisdiction may, on complaint by an inspector, and on being satisfied that any part of the ways, works, machinery, or plant used in a factory or workshop (including a steam boiler for generating steam), is in such a condition that it cannot be used without danger to life or limb, by order, prohibit its use, or, if it is capable of repair or alteration, prohibit its use until it is duly repaired or altered.

(2.) Where a complaint has been made under this section, the court or a justice may, on application *ex parte* by the inspector, and on receiving evidence that the use of any such part of the ways, works, machinery, or plant, involves danger to life, make an interim order

38 & 39 Vict.
c. 55.

Byelaws for
means of
escape from
fire.

Doors of
factory or
workshop to
open from
inside.

Power to
make order
as to
dangerous
machine.

prohibiting, either absolutely or subject to conditions, the use thereof until the earliest opportunity for hearing and determining the complaint.

(3.) If there is any contravention of an order under this section, the person entitled to control the use of the part of the ways, works, machinery, or plant, shall be liable to a fine not exceeding forty shillings a day during the contravention.

18.—(1.) A court of summary jurisdiction may, on complaint by an inspector, and on being satisfied that any place used as a factory or workshop or as part of a factory or workshop is in such a condition that any manufacturing process or handicraft carried on therein cannot be so carried on without danger to health or to life or limb, by order, prohibit the use of that place for the purpose of that process or handicraft, until such works have been executed as are in the opinion of the court necessary to remove the danger.

Power to make order as to unhealthy or dangerous factory or workshop.

(2.) Provided that proceedings shall not be taken under this section in cases where proceedings might be taken by or at the instance of any district council under the provisions of the law relating to public health, unless the inspector is authorised to take proceedings under the foregoing provisions of this Act with respect to the enforcement of sanitary provisions in workshops, or with respect to matters punishable or remediable under the law relating to public health but not under this Act.

(3.) If there is any contravention of an order under this section, the occupier of the place shall be liable to a fine not exceeding forty shillings a day during the contravention.

(iii.) *Accidents.*

19.—(1.) Where there occurs in a factory or workshop any accident which either—

- (a) causes loss of life to a person employed in a factory or workshop; or
- (b) causes to a person employed in the factory or workshop such bodily injury as to prevent him on any one of the three working days next after the occurrence of the accident from being employed for five hours on his ordinary work,

Notice of accidents causing death or bodily injury.

written notice shall forthwith be sent to the inspector for the district.

(2.) If the accident causes loss of life, or is produced either by machinery moved by steam, water, or other mechanical power, or through a vat, pan, or other structure, filled with hot liquid or molten metal or other substance, or by explosion or by escape of gas, steam, or metal, then, unless notice thereof is required by section sixty-three of the Explosives Act, 1875, to be sent to a Government inspector, notice thereof shall forthwith be sent to the certifying surgeon for the district.

38 & 39 Vict.
c. 17.

(3.) The notice shall state the residence of the person killed or injured, and the place to which he has been removed.

(4.) If any notice required by this section to be sent with respect to an accident in a factory or workshop is not so sent, the occupier of the factory or workshop shall be liable to a fine not exceeding five pounds.

(5.) If any accident to which this section applies occurs to a person employed in an iron mill or blast furnace or other factory or workshop where the occupier is not the actual employer of the person killed or injured, the actual employer shall immediately report the same to the occupier, and in default shall be liable to a fine not exceeding five pounds.

20.—(1.) Where a certifying surgeon receives in pursuance of this Act notice of an accident in a factory or workshop, he shall, with the least possible delay, proceed to the factory or workshop, and make a full investigation as to the nature and cause of the death or injury caused by that accident, and within the next twenty-four hours send to the inspector a report thereof.

Investigation of and report on accidents by certifying surgeon.

(2.) The certifying surgeon, for the purpose only of an investigation under this section, shall have the same powers as an inspector, and shall also have power to enter any room in a building to which the person killed or injured has been removed.

Inquest in
case of death
by accident
in factory or
workshop.

21.—(1.) Where a death has occurred by accident in a factory or workshop, the coroner shall forthwith advise the district inspector of the time and place of holding the inquest, and, unless an inspector or some person on behalf of the Secretary of State is present to watch the proceedings, the coroner shall adjourn the inquest, and shall, at least four days before holding the adjourned inquest, send to the inspector notice in writing of the time and place of holding the adjourned inquest.

Provided that, if the accident has not occasioned the death of more than one person, and the coroner has sent to the inspector notice of the time and place of holding the inquest at such time as to reach the inspector not less than twenty-four hours before the time of holding the inquest, it shall not be imperative on him to adjourn the inquest in pursuance of this section, if the majority of the jury think it unnecessary so to adjourn.

(2.) Any relative of any person whose death may have been caused by the accident with respect to which the inquest is being held, and any inspector, and the occupier of the factory or workshop in which the accident occurred, and any person appointed by the order in writing of the majority of the workpeople employed in the factory or workshop, shall be at liberty to attend at the inquest, and, either in person or by his counsel, solicitor, or agent, to examine any witness, subject nevertheless to the order of the coroner.

Power to
direct formal
investigation of
accidents.

22. Where it appears to the Secretary of State that a formal investigation of any accident occurring in a factory or workshop and its causes and circumstances is expedient, the Secretary of State may direct that such an investigation be held, and with respect to any such investigation the following provisions shall have effect :

- (1.) The Secretary of State may appoint a competent person to hold the investigation, and may appoint any person or persons possessing legal or special knowledge to act as assessor or assessors in holding the investigation ;
- (2.) The person or persons so appointed (herein-after called "the court") shall hold the investigation in open court in such manner and under such conditions as the court may think most effectual for ascertaining the causes and circumstances of the accident, and enabling the court to make the report in this section mentioned ;
- (3.) The court shall have for the purpose of the investigation all the powers of a court of summary jurisdiction when acting as a court in hearing informations for offences against this Act, and all the powers of an inspector under this Act, and in addition the following powers, namely :—
 - (a) Power to enter and inspect any place or building the entry or inspection whereof appears to the court requisite for the said purpose ;
 - (b) Power, by summons signed by the court, to require the attendance of all such persons as it thinks fit to call before it and examine for the said purpose, and for that purpose to require answers or returns to such inquiries as it thinks fit to make ;
 - (c) Power to require the production of all books, papers, and documents which it considers important for the said purpose ;
 - (d) Power to administer an oath and require any person examined to make and sign a declaration of the truth of the statements made by him in his examination ;
- (4.) Persons attending as witnesses before the court shall be allowed such expenses as would be allowed to witnesses attending before a court of record ; and in case of dispute as to the amount to be allowed, the same shall be referred by the court to a master of one of His Majesty's superior courts, who on request, signed by the court, shall ascertain and certify the proper amount of the expenses :

- (5.) The court holding an investigation under this section shall make a report to the Secretary of State, stating the causes of the accident and its circumstances, and adding any observations which the court thinks right to make :
- (6.) All expenses incurred in and about an investigation under this section (including the remuneration of any person appointed to act as assessor) shall be deemed to be part of the expenses of the Secretary of State in the execution of this Act :
- (7.) Any person who without reasonable excuse (proof whereof shall lie on him) either fails, after having had the expenses (if any) to which he is entitled tendered to him, to comply with any summons or requisition of a court holding an investigation under this section, or prevents or impedes the court in the execution of its duty, shall for every such offence be liable to a fine not exceeding ten pounds, and in the case of a failure to comply with a requisition for making any return or producing any document shall be liable to a fine not exceeding ten pounds for every day that such failure continues.

The Secretary of State may cause any special report of an inspector or any report of a court under this Part of this Act to be made public at such time and in such manner as he may think fit.

PART II.—EMPLOYMENT.

(i.) *Hours and Holidays.*

23. A woman, young person, or child shall not be employed (i) in a factory or workshop except during the period of employment herein-after mentioned.

24. With respect to the employment of women and young persons in a textile factory, the following regulations shall be observed :

- (1.) The period of employment, except on Saturday, shall either begin at six o'clock in the morning and end at six o'clock in the evening, or begin at seven o'clock in the morning and end at seven o'clock in the evening ;
- (2.) The period of employment on Saturday shall begin either at six o'clock or at seven o'clock in the morning ;
- (3.) Where the period of employment on Saturday begins at six o'clock in the morning, that period—
 - (a) If not less than one hour is allowed for meals, shall end at noon as regards employment in any manufacturing process, and at half-past twelve o'clock in the afternoon as regards employment for any purpose whatever ; and
 - (b) If less than one hour is allowed for meals, shall end at half-past eleven o'clock in the forenoon as regards employment in any manufacturing process, and at noon as regards employment for any purpose whatever ;
- (4.) Where the period of employment on Saturday begins at seven o'clock in the morning, that period shall end at half-past twelve o'clock in the afternoon as regards any manufacturing process, and at one o'clock in the afternoon as regards employment for any purpose whatever ;
- (5.) There shall be allowed for meals during the said period of employment in the factory—
 - (a) on every day except Saturday not less than two hours, of which one hour at the least, either at the same time or at different times, shall be before three o'clock in the afternoon ;
 - (b) on Saturday not less than half an hour :

Restrictions on period of employment of women, young persons, and children.
Hours of employment in textile factories—
young persons and women.

(i) See sect. 152.

Hours of
employment
in textile
factories—
children.

- (6.) A woman or young person shall not be employed continuously for more than four hours and a half, without any interval of at least half an hour for a meal.
25. With respect to the employment of children in a textile factory the following regulations shall be observed :—
- (1.) Children shall not be employed except on the system either of employment in morning and afternoon sets, or of employment on alternate days only.
 - (2.) The period of employment for a child in a morning set shall, except on Saturday, begin at the same hour as if the child were a young person, and end either—
 - (a) at one o'clock in the afternoon ; or
 - (b) if the dinner time begins before one o'clock, at the beginning of dinner time ; or
 - (c) if the dinner time does not begin before two o'clock, at noon.
 - (3.) The period of employment for a child in an afternoon set shall, except on Saturday, begin either—
 - (a) at one o'clock in the afternoon ; or
 - (b) at any later hour at which the dinner time terminates ; or
 - (c) if the dinner hour does not begin before two o'clock, and the morning set ends at noon, at noon ;
 and shall end at the same hour as if the child were a young person.
 - (4.) The period of employment for any child on Saturday shall begin and end at the same hour as if the child were a young person.
 - (5.) A child shall not be employed in two successive periods of seven days in the morning set, nor in two successive periods of seven days in an afternoon set, and a child shall not be employed on two successive Saturdays, nor on Saturday in any week if on any other day in the same week his period of employment has exceeded five hours and a half.
 - (6.) When a child is employed on the alternate day system the period of employment for such child and the time allowed for meals shall be the same as if the child were a young person, but the child shall not be employed on two successive days, and shall not be employed on the same day of the week in two successive weeks.
 - (7.) A child shall not on either system be employed continuously for more than four hours and a half without an interval of at least half an hour for a meal.

Hours of
employment
in non-textile
factories and
workshops—
young
persons and
women.

26. With respect to the employment of women and young persons in a non-textile factory, and a workshop, the following regulations shall be observed :—
- (1.) The period of employment, except on Saturday, shall (save as is in this Act specially excepted) either begin at six o'clock in the morning and end at six o'clock in the evening, or begin at seven o'clock in the morning and end at seven o'clock in the evening, or begin at eight o'clock in the morning and end at eight in the evening.
 - (2.) The period of employment on Saturday shall (save as is in this Act specially excepted) begin at six o'clock in the morning and end at two o'clock in the afternoon, or begin at seven o'clock in the morning and end at three o'clock in the afternoon, or begin at eight o'clock in the morning and end at four o'clock in the afternoon.
 - (3.) There shall be allowed for meals during the said period of employment in the factory or workshop—
 - (a) on every day except Saturday not less than one hour and a half, of which one hour at the least, either at the same time or at different times, shall be before three o'clock in the afternoon ; and
 - (b) on Saturday not less than half an hour.

- (4.) A woman or a young person in a non-textile factory and a young person in a workshop shall not be employed continuously for more than five hours without an interval of at least half an hour for a meal.
27. With respect to the employment of children in a non-textile factory and a workshop, the following regulations shall be observed :—
- (1.) Children shall not be employed except either on the system of employment in morning and afternoon sets, or (in a factory or workshop in which not less than two hours are allowed for meals on every day except Saturday) on the system of employment on alternate days only.
- (2.) The period of employment for a child in the morning set on every day, including Saturday, shall begin at six or seven or eight o'clock in the morning and end either—
- (a) at one o'clock in the afternoon ; or
 - (b) if the dinner time begins before one o'clock, at the beginning of dinner time ; or
 - (c) if the dinner time does not begin before two o'clock, at noon.
- (3.) The period of employment for a child in an afternoon set on every day, including Saturday, shall begin either—
- (a) at one o'clock in the afternoon ; or
 - (b) at any hour later than half-past twelve at which the dinner time terminates ; or
 - (c) if the dinner time does not begin before two o'clock and the morning set ends at noon, at noon ;
- and shall end on Saturday at two o'clock in the afternoon, and on any other day at six or seven or eight o'clock in the evening, according as the period of employment for children in the morning set began at six or seven or eight o'clock in the morning.
- (4.) A child shall not be employed in two successive periods of seven days in a morning set, nor in two successive periods of seven days in an afternoon set, and a child shall not be employed on Saturday in any week in the same set in which he has been employed on any other day of the same week.
- (5.) When a child is employed on the alternate day system—
- (a) The period of employment for such a child shall, except on Saturday, either begin at six o'clock in the morning and end at six o'clock in the evening, or begin at seven o'clock in the morning and end at seven o'clock in the evening, or begin at eight o'clock in the morning and end at eight o'clock in the evening ;
 - (b) The period of employment for such child shall on Saturday begin at six or seven o'clock in the morning, and end at two o'clock in the afternoon, or begin at eight o'clock in the morning, and end at four o'clock in the afternoon ;
 - (c) There shall be allowed to such child for meals during the said period of employment not less, on any day except Saturday, than two hours, and on Saturday than half an hour ; but
 - (d) The child shall not be employed in any manner on two successive days, and shall not be employed on the same day of the week in two successive weeks.
- (6.) A child shall not on either system be employed continuously for more than five hours without an interval of at least half an hour for a meal.
28. In print works and bleaching and dyeing works the period of employment for a woman, young person, and child, and the times allowed for meals, shall be the same as if the works were a textile factory, and the regulations of this Act with respect to the employment of women,

Hours of
employment
in non-textile
factories and
workshops—
children.

Hours of
employment
in print
works and
bleaching
and dyeing
works.

young persons, and children in a textile factory shall apply accordingly, as if print works and bleaching and dyeing works were textile factories; save that nothing in this section shall prevent the continuous employment of a woman, young person, or child in the works for five hours without an interval of half an hour for a meal.

Special provisions as to employment in women's workshops.

29.—(1.) In a workshop which is conducted on the system of not employing therein either children or young persons, and the occupier of which has served on an inspector notice of his intention to conduct his workshop on that system—

- (a) The period of employment for a woman shall, except on Saturday, be a specified period of twelve hours taken between six o'clock in the morning and ten o'clock in the evening, and shall on Saturday be a specified period of eight hours, taken between six o'clock in the morning and four o'clock in the afternoon; and
- (b) There shall be allowed to a woman for meals and absence from work during the period of employment, a specified period not less, except on Saturday, than one hour and a half, and on Saturday than half an hour.

(2) Where the occupier of a workshop has served on an inspector notice of his intention to conduct that workshop on the system of not employing children or young persons therein, the workshop shall be deemed to be conducted on that system until the occupier changes it, and no change shall be made until the occupier has served on the inspector notice of his intention to change the system, and until the change a child or young person employed in the workshop shall be deemed to be employed contrary to the provisions of this Act. A change in the system shall not be made oftener than once a quarter, unless for special cause allowed in writing by an inspector.

Special provision as to eight hours employment of women and young persons.

30. In a non-textile factory or workshop where a woman or young person has not been actually employed for more than eight hours on any day in a week, and notice of such non-employment has been affixed in the factory or workshop and served on the inspector, the period of employment on Saturday in that week for that woman or young person may be from six o'clock in the morning to four o'clock in the afternoon, with an interval of not less than two hours for meals.

Restriction on employment inside and outside factory or workshop on same day.

31.—(1.) A child must not, except during the period of employment, be employed in the business of a factory or workshop outside the factory or workshop on any day during which the child is employed in the factory or workshop.

(2.) A woman or young person must not, except during the period of employment, be employed in the business of a factory or workshop outside the factory or workshop on any day during which the woman or young person is employed in the factory or workshop both before and after the dinner hour.

(3.) For the purposes of this section a woman, young person, or child to or for whom any work is given out, or who is allowed to take out any work to be done by him or her outside a factory or workshop, shall be deemed to be employed outside the factory or workshop on the day on which the work is so given or taken out.

(4.) If a woman or young person is employed by the occupier of a factory or workshop on the same day, both in the factory or workshop, and in a shop, then—

- (a) the whole time during which that woman or young person is employed shall not exceed the number of hours permitted by this Act for her or his employment in the factory or workshop on that day; and
- (b) if the woman or young person is employed in the shop, except during the period of employment fixed by the occupier, and specified in a notice affixed in the factory or workshop in pursuance of this Act, the occupier shall make the prescribed entry in the general register with regard to her or his employment.

(5.) This Act shall apply as if any woman, young person, or child employed in contravention of this section were employed in a factory or workshop contrary to the provisions of this Act.

32.—(1.) The occupier of every factory and workshop may fix within the limits allowed by this Act, and shall, subject to any special exceptions made by or in pursuance of this Act, specify in a notice which must be affixed in the factory or workshop—

Notice fixing hours of employment, &c.

(a) The period of employment ;

(b) The times allowed for meals ; and

(c) Whether the children are employed on the system of morning and afternoon sets or of alternate days.

(2.) In a factory or workshop where such a notice is required to be affixed, the period of employment, the times allowed for meals, and the system of employment for all the children in the factory or workshop, shall be those for the time being specified in the notice.

(3.) A change in the said period or times or system shall not be made until the occupier has served on an inspector, and affixed in the factory or workshop, notice of his intention to make the change, and shall not be made oftener than once a quarter, unless for special cause allowed in writing by an inspector.

(4.) Where an inspector, by notice in writing, names a public clock, or some other clock open to public view, for the purpose of regulating the period of employment in a factory or workshop, the period of employment and the times allowed for meals in that factory or workshop shall be regulated by that clock.

33. With respect to meals the following regulations shall (save as is in this Act specially excepted) be observed in a factory and workshop (j) :—

Meal times to be simultaneous, and employment during meal times forbidden.

(1.) All women, young persons, and children employed therein shall have the times allowed for meals at the same hour of the day ; and

(2.) A woman, young person, or child shall not during any part of the times allowed for meals in the factory or workshop, be employed in the factory or the workshop, or be allowed to remain in a room in which a manufacturing process or handicraft is then being carried on.

34. A woman, young person, or child shall not (save as is in this Act specially excepted) be employed on Sunday in a factory or workshop.

Prohibition of Sunday employment.

35.—(1.) Subject to any special exceptions made by or in pursuance of this Act, the occupier of a factory or workshop shall allow in each year to every woman, young person, and child employed in the factory or workshop the following holidays :—

Annual holidays and half-holidays.

In England there shall be allowed as whole holidays—

Christmas Day, Good Friday, and every Bank holiday, unless, in lieu of any of those days, another whole holiday or two half holidays, fixed by the occupier, be allowed.

In Scotland there shall be allowed—

(a) In burghs or police burghs, as whole holidays, the two days set apart by the Church of Scotland for the observance of the Sacramental Fast in the parish, or, if those fast days have been abolished or discontinued, two days, not less than three months apart, to be fixed by the town council ; elsewhere, two whole holidays, not less than three months apart, fixed by the occupier ;

(b) Eight half holidays fixed by the occupier, but a whole holiday, fixed by the occupier, may be allowed in lieu of any two half holidays.

(j) See sections 137 and 138 as to fines for breach of this section, and sect. 152 for the meaning of "employment." See also *Prior v. Slaithwaite Spinning Co.*, (1898) 1 Q. B. 881, a decision on the corresponding provisions of the Factory and Workshop Act, 1878.

In Ireland there shall be allowed—

- (a) Christmas Day ;
- (b) Any two of the following days, fixed by the occupier, namely, the seventeenth of March (when it does not fall on a Sunday), Good Friday, Easter Monday, and Easter Tuesday ;
- (c) Six half holidays, fixed by the occupier, but a whole holiday, fixed by the occupier, may be allowed in lieu of any two half holidays.

(2.) At least half of the said whole holidays or half holidays shall be allowed between the fifteenth day of March and the first day of October in every year.

(3.) A notice of every whole holiday or half holiday must be affixed in the factory or workshop during the first week in January, and a copy thereof must on the same day be forwarded to the inspector for the district, and unless the notice has been so affixed and sent cessation from work shall not be deemed to be a whole holiday or a half holiday :

Provided that—

(a) this sub-section does not apply in the case of a whole holiday in a factory or workshop in England or Wales if the whole holiday is Christmas Day or Good Friday or a Bank holiday ;

(b) any such notice may be changed by a subsequent notice affixed and sent in like manner not less than fourteen days before the holiday or half holiday to which it applies.

(4.) A half holiday shall comprise at least one half of the period of employment for women and young persons on some day other than Saturday, or a day substituted for Saturday.

(5.) A woman, young person, or child who—

(a) on a whole holiday fixed by or in pursuance of this section for a factory or workshop is employed in the factory or workshop ; or

(b) on a half holiday fixed in pursuance of this section for a factory or workshop is employed in the factory or workshop during the portion of the period of employment assigned for that half holiday ;

shall be deemed to be employed contrary to the provisions of this Act.

(6.) If in a factory or workshop such whole holidays or half holidays as are required by this section are not fixed in conformity therewith, the occupier of the factory or workshop shall be liable to a fine not exceeding five pounds.

(ii.) *Special Exceptions as to Hours and Holidays.*

Employment
between
9 a.m. and
9 p.m. in
certain cases.

36. Where it is proved to the satisfaction of a Secretary of State that the customs or exigencies of the trade carried on in any class of non-textile factories or workshops, or parts thereof, either generally or when situate in any particular locality, require that the special exception hereafter in this section mentioned should be granted, and that the grant can be made without injury to the health of the women, young persons, and children, affected thereby, he may, by Special Order, grant to that class of factories or workshops, or parts thereof, a special exception that the period of employment for women and young persons therein, if so fixed by the occupier and specified in the notice, may on any day except Saturday begin at nine o'clock in the morning and end at nine o'clock in the evening, and in that case the period of employment for a child in a morning set shall begin at nine o'clock in the morning, and the period of employment for a child in an afternoon set shall end at eight o'clock in the evening.

Employment
of male young
persons above
16 in lace
factories.

37.—1. In the part of a textile factory in which a machine for the manufacture of lace is moved by steam, water, or other mechanical power, the period of employment for any male young person above the age of sixteen years may be between four o'clock in the morning and ten

o'clock in the evening, if he is employed in accordance with the following conditions; namely:—

- (a) Where he is employed on any day before the beginning or after the end of the ordinary period of employment, there must be allowed him for meals and absence from work between the above-mentioned hours of four in the morning and ten in the evening not less than nine hours; and
 - (b) Where he is employed on any day before the beginning of the ordinary period of employment, he must not be employed on the same day after the end of that period; and
 - (c) Where he is employed on any day after the end of the ordinary period of employment, he must not be employed next morning before the beginning of the ordinary period of employment.
- (2.) For the purpose of this exception the ordinary period of employment means the period of employment for women or young persons under the age of sixteen years in the factory, or, if none are employed, means such period as can under this Act be fixed for the employment of women and young persons under the age of sixteen years in the factory, and notice of such period shall be affixed in the factory.

38.—(1.) In the part of a bakehouse in which the process of baking bread is carried on, the period of employment for any male young person above the age of sixteen years may be between five o'clock in the morning and nine o'clock in the evening, if he is employed in accordance with the following conditions; namely:—

Employment of male young persons above 16 in bake-houses.

- (a) Where he is employed on any day before the beginning or after the end of the ordinary period of employment, there must be allowed him for meals and absence from work between the above-mentioned hours of five in the morning and nine in the evening not less than seven hours; and
 - (b) Where he is employed on any day before the beginning of the ordinary period of employment, he must not be employed on the same day after the end of that period; and
 - (c) Where he is employed on any day after the end of the ordinary period of employment, he must not be employed next morning before the beginning of the ordinary period of employment.
- (2.) For the purposes of this exception the ordinary period of employment means the period of employment for women or young persons under the age of sixteen years in the bakehouse, or, if none are employed, means such period as can under this Act be fixed for the employment of women and young persons under the age of sixteen years in the bakehouse, and notice of that period shall be affixed in the bakehouse.

39.—(1.) In any of the textile factories to which this exception applies, a woman, young person, or child may, between the first day of November and the last day of March next following, be employed continuously for five hours without an interval for a meal; provided that,—

Five hours' spell in certain textile factories.

- (a) the period of employment fixed by the occupier and specified in the notice begins at seven o'clock in the morning; and
 - (b) the whole time between that hour and eight o'clock is allowed for meals.
- (2.) This exception applies to textile factories solely used for
- (a) the making of elastic web; or
 - (b) the making of ribbon; or
 - (c) the making of trimming.
- (3.) Where it is proved to the satisfaction of the Secretary of State that in any class of textile factories, either generally or when situate in any particular locality, the customary habits of the persons employed therein require the extension thereto of this exception, and that the manufacturing process carried on therein is of a healthy character, and the extension can be made without injury to the health of the women, young persons, and children, affected thereby, he may, by Special Order, extend this exception accordingly. The limitation of this exception to

Different
meal times
for different
sets, and
employment
during
meal times.

the period between the first day of November and the following last day of March shall not, if the Secretary of State by Special Order so directs, apply to hosiery factories.

40.—(1.) The provisions of this Act which require that all the women, young persons, and children employed in a factory or workshop must have the times allowed for meals at the same hour of the day shall not apply to the following factories, namely :—

- (i) Blast furnaces, or
- (ii) Iron mills, or
- (iii) Paper mills, or
- (iv) Glass works, or
- (v) Letter-press printing works.

(2.) The provisions of this Act which require that a woman, young person, or child shall not during the times allowed for meals be employed or be allowed to remain in a room in which a manufacturing process or handicraft is being carried on shall not apply to the following factories, namely :—

- (i) Iron mills, or
- (ii) Paper mills, or
- (iii) Glass works (except any part in which the materials are mixed, and, in the case of glass works where flint glass is made, any part in which the work of grinding, cutting, or polishing is carried on), or
- (iv) Letter-press printing works.

(3.) In that part of any print works or bleaching and dyeing works in which the process of dyeing or open-air bleaching is carried on—

- (i) A male young person may have the times allowed him for meals at different hours of the day from other young persons and women and children employed in the factory ;
- (ii) A male young person may during the times allowed for meals to any other young person or to any woman or child be employed or be allowed to remain in a room in which a manufacturing process is carried on ; and
- (iii) During the times allowed for meals to a male young person any other young person or any woman or child may be employed in the factory or be allowed to remain in a room in which a manufacturing process is carried on.

(4.) Where it is proved to the satisfaction of the Secretary of State that in any class of factories or workshops or parts thereof it is necessary, by reason of the continuous nature of the process or of special circumstances affecting that class, to extend thereto both or either of the following exceptions, namely :—

- (a) an exception permitting the women, young persons, and children employed in the factory or workshop to have the times allowed for meals at different hours of the day ; or
- (b) an exception permitting women, young persons, and children, during the times allowed for meals in the factory or workshop, to be employed in the factory or workshop or to be allowed to remain in a room in which a manufacturing process or handicraft is being carried on.

and that the extension can be made without injury to the health of the women, young persons, and children, affected thereby, he may, by Special Order, extend both or either of those exceptions accordingly.

41.—(1.) The provisions of this Act as to period of employment, times for meals, and holidays, shall not apply to young persons and women engaged—

- (a) in processes in the preserving and curing of fish which must be carried out immediately on the arrival of the fishing boats in order to prevent the fish from being destroyed or spoiled ; or
- (b) in the process of cleaning and preparing fruit so far as is necessary to prevent the spoiling of the fruit immediately on its arrival at

Special
exceptions
as to fish
and fruit
preserving.

a factory or workshop during the months of June, July, August, and September, but this exception shall be subject to such conditions as the Secretary of State may by Special Order prescribe.

(2.) Where an occupier avails himself of this exception, the notice required to be served and affixed by an occupier of a factory or workshop availing himself of any special exception, need not specify the hours for the beginning and end of the period of employment, or the times to be allowed for meals.

42. In the case of creameries in which women and young persons are employed, the Secretary of State may, by Special Order, vary the beginning and end of the daily period of employment of those women and young persons, and the times allowed for their meals, and allow their employment for not more than three hours on Sundays and holidays : Provided that the order shall not permit any excess over either the daily or the weekly maximum number of hours of employment allowed by this Act.

Special exceptions as to creameries.

43. Where it is proved to the satisfaction of the Secretary of State that the customs or exigencies of the trade carried on in any class of non-textile factories or workshops, either generally or when situate in any particular locality, require some other day in the week to be substituted for Saturday as regards the hour at which the period of employment for women, young persons, and children is required by this Act to end on Saturday, he may, by Special Order, grant to that class of factories or workshops a special exception, authorising the occupier of every such factory and workshop to substitute by a notice affixed in his factory or workshop some other day for Saturday, and in that case this Act shall apply in the factory or workshop in like manner as if the substituted day were Saturday, and Saturday were an ordinary work day. In the case of newspaper printing offices, he may by such order authorise the substitution of some other day for Saturday in respect of some of the young persons therein employed.

Substitution of another day for Saturday.

44. In the process of Turkey red dyeing the period of employment for women and young persons on Saturday may extend until half-past four o'clock in the afternoon, but the additional number of hours so worked shall be computed as part of the week's limit of work, which must in no case be exceeded.

Saturday employment in Turkey red dyeing.

45. Where it is proved to the satisfaction of the Secretary of State that the customs or exigencies of the trade carried on in any class of non-textile factories or workshops, either generally or when situate in any particular locality, require that the special exception hereafter in this section mentioned should be granted, he may, by Special Order, grant to that class of factories or workshops a special exception authorising the occupier of any such factory or workshop to allow all or any of the annual whole holidays or half holidays on different days to any of the women, young persons, and children employed in his factory or workshop, or to any sets of those women, young persons and children, and not on the same days.

Holidays on different days for different sets.

46. Where it is proved to the satisfaction of the Secretary of State that the customs or exigencies of the trade carried on in any class of factories or workshops, or parts thereof, either generally or when situate in any particular locality, require that that trade should be excepted from the operation of the provisions of this Act relating to employment inside and outside a factory or workshop on the same day, he may, by Special Order, grant to that class of factories or workshops, or parts thereof, such special exception as may be necessary.

Employment inside and outside on the same day.

47. Where the occupier of a factory or workshop is a person of the Jewish religion—

Hours and holidays in factory or workshop of Jewish occupier.

(1.) If he keeps his factory or workshop closed on Saturday until sunset, he may employ women and young persons on Saturday from after sunset until nine o'clock in the evening ; or

(2.) If he keeps his factory or workshop closed on Saturday both before and after sunset, he may employ women and young

Sunday
employment
of Jews in
factory or
workshop
or Jewish
occupier.

persons one hour on every other day in the week (not being Sunday), in addition to the hours allowed by this Act, so that such hour be at the beginning or end of the period of employment, and be not before six o'clock in the morning or after nine o'clock in the evening.

48. Where the occupier of a factory or workshop is a person of the Jewish religion, a woman or young person of the Jewish religion may be employed on Sunday, subject to the following conditions :—

- (1.) The factory or workshop must be closed on Saturday and must not be open for traffic (*k*) on Sunday ; and
- (2.) The occupier must not avail himself of the exception authorising the employment of women and young persons on Saturday evening, or for an additional hour during any other day in the week.

Where the occupier avails himself of this exception, this Act shall apply to the factory or workshop in like manner as if in the provisions thereof respecting Sunday the word Saturday were substituted for Sunday, and in the provisions thereof respecting Saturday the word Sunday, or, if the occupier so specify in the notice, the word Friday were substituted for Saturday.

Overtime.

Overtime
employment of
women for
press of work.

49.—(1.) In the non-textile factories and workshops or parts thereof and warehouses to which this exception applies, the period of employment for women on any day except Saturday, or any day substituted for Saturday, may be between six o'clock in the morning and eight o'clock in the evening, or between seven o'clock in the morning and nine o'clock in the evening, or between eight o'clock in the morning and ten o'clock in the evening, if they are employed in accordance with the following conditions, namely :—

- (a) There must be allowed to every woman for meals during the period of employment not less than two hours, of which half an hour must be after five o'clock in the evening ; and
- (b) A woman must not be so employed in the whole for more than three days in any one week ; and
- (c) Overtime employment under this section must not take place in a factory or workshop on more than thirty days in the whole in any twelve months, and in reckoning that period of thirty days, every day on which any woman has been employed overtime is to be taken into account.

(2.) This exception applies to the non-textile factories and workshops and parts thereof and warehouses specified in the Second Schedule to this Act, except that it does not apply to a workshop or part thereof which is conducted on the system of not employing any young person or child therein.

(3.) Where it is proved to the satisfaction of the Secretary of State that in any class of non-textile factories or workshops or parts thereof it is necessary, by reason of the material which is the subject of the manufacturing process or handicraft therein being liable to be spoiled by the weather, or by reason of press of work arising at certain recurring seasons of the year, or by reason of the liability of the business to a sudden press of orders arising from unforeseen events, to employ women in a manner authorised by this exception, and that such employment will not injure the health of the women affected thereby, he may, by Special Order, extend this exception to those factories or workshops or parts thereof.

50.—(1.) In the factories and workshops and parts thereof to which this exception applies, the period of employment for a woman may on

Overtime
employment
of women on
perishable
articles.

(s) *Goldstein v. Farnham*, (1897) 1 Q. B. 549.

any day except Saturday, or any day substituted for Saturday, be between six o'clock in the morning and eight o'clock in the evening, or between seven o'clock in the morning and nine o'clock in the evening, if she is employed in accordance with the following conditions, namely :—

- (a) There must be allowed her for meals not less than two hours, of which half an hour must be after five o'clock in the evening ; and
 - (b) She must not be so employed in the whole for more than three days in any one week ; and
 - (c) Overtime employment under this section must not take place in a factory or workshop on more than fifty days in the whole in any twelve months ; and in reckoning that period of fifty days, every day on which any woman has been employed overtime is to be taken into account.
- (2.) This exception applies to every factory and workshop or part thereof in which is carried on—

- (a) the process of making preserves from fruit ; or
- (b) the process of preserving or curing fish ; or
- (c) the process of making condensed milk.

(3.) Where it is proved to the satisfaction of the Secretary of State that in any class of non-textile factories or workshops or parts thereof it is necessary, by reason of the perishable nature of the articles or materials which are the subject of the manufacturing process or handicraft, to employ women in manner authorised by this exception, and that such employment will not injure the health of the women employed, he may, by Special Order, extend this exception to those factories or workshops or parts thereof.

51.—(1.) If in any factory or workshop or part thereof to which this exception applies, the process in which a woman, young person, or child is employed, is in an incomplete state at the end of the period of employment of the woman, young person, or child, the woman, young person, or child may on any day except Saturday, or any day substituted for Saturday, be employed for a further period not exceeding thirty minutes :

Overtime
employment
on incom-
plete process.

Provided that those further periods, when added to the total number of hours of the periods of employment of the woman, young person, or child in that week, do not raise that total above the number otherwise allowed under this Act.

(2.) This exception applies to the factories and workshops following, namely :—

- (a) Bleaching and dyeing works ;
- (b) Print works ;
- (c) Iron mills in which male young persons are not employed during any part of the night ;
- (d) Foundries in which male young persons are not employed during any part of the night ; and
- (e) Paper mills in which male young persons are not employed during any part of the night.

(3.) Where it is proved to the satisfaction of the Secretary of State that in any class of non-textile factories or workshops or parts thereof the time for the completion of a process cannot by reason of the nature thereof be accurately fixed, and that the extension to that class of factories or workshops or parts thereof of this exception can be made without injury to the health of the women, young persons, and children, affected thereby, he may by Special Order extend this exception accordingly.

52. Where it appears to the Secretary of State that factories driven by water power are liable to be stopped by drought or flood, he may, by Special Order, grant to those factories a special exception permitting the employment of women and young persons during a period of employment from six o'clock in the morning until seven o'clock in the evening, on such conditions as he thinks proper, but so as that no person shall be

Overtime
employment
in factories
driven by
water.

deprived of the meal hours by this Act provided, nor be so employed on Saturday, or any day substituted for Saturday, and that as regards factories liable to be stopped by drought, the special exception shall not extend to more than ninety-six days in any period of twelve months, and as regards factories liable to be stopped by floods, the special exception shall not extend to more than forty-eight days in any period of twelve months. This overtime shall not extend in any case beyond the time already lost during the previous twelve months.

Overtime
employment
in Turkey
red dyeing
and open-air
bleaching.

53. A woman or young person may on any day except Saturday, or any day substituted for Saturday, be employed beyond the period of employment, so far as is necessary for the purpose only of preventing any damage which may arise from spontaneous combustion in the process of Turkey red dyeing, or from any extraordinary atmospheric influence in the process of open-air bleaching.

Night Work.

Night em-
ployment of
male young
persons of 14.

54.—(1.) In the factories and workshops to which this exception applies, a male young person of fourteen years of age and upwards may be employed during the night, if he is employed in accordance with the following conditions, namely—

- (a) The period of employment must not exceed twelve consecutive hours, and must begin and end at the hours specified in the notice in this Act mentioned; and
- (b) The provisions of this Part of this Act with respect to the allowance of times for meals shall be observed with the necessary modifications as to the hour at which the meal times are fixed; and
- (c) A young person employed during any part of the night must not be employed during any part of the twelve hours preceding or succeeding the period of employment; and
- (d) He must not be employed on more than six nights, or in the case of blast furnaces or paper mills seven nights, in any two weeks; provided that this condition shall not prevent the employment of male young persons in three shifts of not more than eight hours each, if there is an interval of two unemployed shifts between each two shifts of employment; and
- (e) In the case of blast furnaces, iron mills, letter-press printing works, or paper mills, he must not be employed during the night in any process other than a process incidental to the business of the factory as described in Part I. of the Sixth Schedule to this Act.

(2.) The provisions of this Act with respect to the period of employment on Saturday, and with respect to the allowance to young persons of whole or half holidays, shall not apply to a male young person employed in day and night turns in pursuance of this exception.

(3.) This exception applies to the following factories, namely:—

- (a) Blast furnaces,
- (b) Iron mills,
- (c) Letter-press printing works, and
- (d) Paper mills.

(4.) Where it is proved to the satisfaction of the Secretary of State that in any class of non-textile factories or workshops, or parts thereof, it is necessary by reason of the nature of the business requiring the process to be carried on throughout the night to employ male young persons of sixteen years of age and upwards at night, and that such employment will not injure the health of the male young persons employed, he may, by Special Order, extend this exception to those factories or workshops or parts thereof so far as regards young persons of the age of sixteen years and upwards.

55. In glass works a male young person of fourteen years of age and upwards may work according to the accustomed hours of the works, if he is employed in accordance with the following conditions, namely:—

- (a) The total number of hours of the periods of employment must not exceed sixty in any one week; and
- (b) The periods of employment must not exceed fourteen hours in four separate turns per week, or twelve hours in five separate turns per week, or ten hours in six separate turns per week, or any less number of hours in the accustomed number of separate turns per week, so that the number of turns do not exceed nine; and
- (c) He must not work in any turn without an interval of time not less than one full turn; and
- (d) He must not be employed continuously for more than five hours without an interval of an least half an hour for a meal; and
- (e) He must not be employed on Sunday.

56. In a factory or workshop in which the process of printing newspapers is carried on on not more than two nights in the week, a male young person above the age of sixteen years may be employed at night during not more than two nights in a week, as if he were no longer a young person:

Provided that he must not in pursuance of this exception be employed more than twelve hours in any consecutive period of twenty-four hours.

Night employment of male young persons of 14 in glass works.

Night employment of male young persons of 16 in printing newspapers.

Intermittent Employment.

57.—(1.) The regulations of this Act with respect to the period of employment for women shall not apply to flax scutch mills which are conducted on the system of not employing either young persons or children therein, and which are worked intermittently, and for periods only which do not exceed in the whole six months in any year.

(2.) A flax scutch mill shall not be deemed to be conducted on the system of not employing either young persons or children therein, until the occupier has served on an inspector notice of his intention to conduct the mill on that system.

Exemption for certain flax scutch mills.

Supplemental.

58.—(1.) Where it appears to the Secretary of State—

- (a) That the adoption of any special means or provision for the cleanliness or ventilation of a factory or workshop is required for the protection of the health of women, young persons, or children, employed, in pursuance of an exception under this Part of this Act, either for a longer period than is otherwise allowed by this Act, or at night; or
- (b) That the adoption of a special provision as to the total number of hours of employment in each week, the periods of employment, and the intervals between such periods, is required for the protection of the health of any women or young persons employed in pursuance of such an exception at night,

he may, by Special Order, direct that the adoption of the means or provision shall be a condition of such employment.

(2.) If it appears to the Secretary of State that the adoption of any such means or provision is no longer required, or is, having regard to all the circumstances, inexpedient, he may, by Special Order, rescind the order directing the adoption without prejudice to the subsequent making of another order.

59. Where an exception has been granted or extended under this Act by an order of the Secretary of State, and it appears to the Secretary of State that the exception is injurious to the health of the women, young persons, or children employed in, or is no longer necessary for the carrying on of the business in, the class of factories or workshops or parts

Power to impose sanitary requirements as condition of special exceptions.

Power to rescind orders as to special exceptions.

Notices,
registers,
&c. relating
to special
exceptions.

thereof to which the exception was so granted or extended, he may, by Special Order, rescind the grant or extension, without prejudice to the subsequent making of another order.

60.—(1.) An occupier of a factory or workshop, not less than seven days before he avails himself of any special exception made by or in pursuance of this Act, shall serve on the inspector for the district, and affix in his factory or workshop, notice of his intention so to avail himself, and whilst he avails himself of the exception shall keep the notice so affixed.

(2.) Before the service of the notice on the inspector the special exception shall not be deemed to apply to the factory or workshop, and after the service of the notice on the inspector it shall not be competent in any proceeding under this Act for the occupier to prove that the exception does not apply to his factory or workshop, unless he has previously served on the inspector for the district notice that he no longer intends to avail himself of the exception.

(3.) The notice so served and affixed must, except as otherwise provided by this Act, specify the hours for the beginning and end of the period of employment, and the times to be allowed for meals to every woman, young person, and child where they differ from the ordinary hours or times.

(4.) An occupier of a factory or workshop shall enter in the prescribed register and report to the inspector for the district the prescribed particulars respecting the employment of a woman, young person, or child in pursuance of a special exception; and, in the case of employment overtime, he shall also cause a notice containing the prescribed particulars respecting the employment to be kept affixed in the factory or workshop during the prescribed time, and he shall send the report required by this sub-section to the inspector not later than eight o'clock in the evening on which any woman, young person, or child is employed overtime in pursuance of the exception.

(5.) Where the occupier of a factory or workshop avails himself of a special exception made by or in pursuance of this Act, and a condition for availing himself of that exception (whether specified in this Act, or in an order of the Secretary of State made under this Act) is not observed in that factory or workshop, then—

- (a) If the condition relates to the cleanliness, ventilation, or overcrowding of the factory or workshop, the factory or workshop shall be deemed not to be kept in conformity with this Act; and
- (b) In any other case a woman, young person, or child, employed in the factory or workshop, in alleged pursuance of the exception, shall be deemed to be employed contrary to the provisions of this Act.

(6.) Where an occupier of a factory or workshop has served on an inspector a report in pursuance of this section of his intention to employ any persons overtime by virtue of a special exception, the report shall, unless withdrawn, be *prima facie* evidence in any proceedings under this Act that the occupier has in fact employed persons overtime in accordance with the report.

Prohibition
of employ-
ment of
women after
childbirth.
Prohibition
of employment
of children
under twelve.
Certificates of
fitness for

(iii.) *Fitness for Employment.*

61. An occupier of a factory or workshop shall not knowingly allow a woman or girl to be employed therein within four weeks after she has given birth to a child.

62. A child under the age of twelve years must not be employed in a factory or workshop unless lawfully so employed at the commencement of this Act.

63.—(1.) In a factory a young person under the age of sixteen years or a child must not be employed for more than seven, or if the certifying surgeon for the district reside more than three miles from the factory

thirteen, work days, unless the occupier of the factory has obtained a certificate, in the prescribed form, of the fitness of the young person or child for employment in that factory.

(2.) When a child becomes a young person a fresh certificate of fitness must be obtained.

(3.) The occupier shall, when required, produce to an inspector at the factory in which a young person or child is employed the certificate of fitness of that young person or child for employment.

64. With respect to a certificate of fitness for employment for the purposes of this Act, the following provisions shall have effect :—

(1.) The certificate shall be granted by the certifying surgeon for the district.

(2.) The certificate must not be granted except upon personal examination of the person named therein.

(3.) A certifying surgeon shall not examine a young person or child for the purpose of the certificate or sign the certificate elsewhere than at the factory where the young person or child is or is about to be employed, unless the number of young persons and children employed in that factory is less than five, or unless for some special reason allowed in writing by an inspector.

(4.) The certificate must be to the effect that the certifying surgeon is satisfied, by the production of a certificate of birth or other sufficient evidence, that the person named in the certificate is of the age therein specified, and has been personally examined by him and is not incapacitated by disease or bodily infirmity for working daily for the time allowed by law in the factory named in the certificate.

(5.) The certificate may be qualified by conditions as to the work on which a child or young person is fit to be employed, and if it is so qualified the occupier shall not employ the young person or child otherwise than in accordance with the conditions.

(6.) A certifying surgeon shall have the same powers as an inspector for the purpose of examining any process in which a child or young person presented to him for the grant of a certificate is proposed to be employed.

(7.) All factories in the occupation of the same occupier and in the district of the same certifying surgeon, or any of them, may be named in the certificate, if the surgeon is of opinion that he can truly give the certificate for employment therein.

(8.) The certificate of birth (which may be produced to a certifying surgeon) shall either be a certified copy of the entry in the register of births, kept in pursuance of the Acts relating to the registration of births, of the birth of the young person or child (whether that copy is obtained in pursuance of the Elementary Education Act, 1876, or otherwise), or be a certificate from a local authority within the meaning of the Elementary Education Act, 1876, to the effect that it appears from the returns transmitted to that authority in pursuance of the said Act by the registrar of births and deaths that the child was born at the date named in the certificate.

(9.) Where the certificate is to the effect that the certifying surgeon has been satisfied of the age of a young person or child by evidence other than the production of a certificate of birth, an inspector may, by notice in writing, annul the surgeon's certificate if he has reasonable cause to believe that the real age of the young person or child named in it is less than that mentioned in the certificate, and thereupon that certificate shall be of no avail for the purposes of this Act.

(10.) Where a certifying surgeon refuses to grant a certificate for any person examined by him, he shall when required give in writing and sign the reasons for his refusal.

employment
of young
persons
under 16
and children
in factories.

Regulations
as to grant
of certificate
of fitness.

39 & 40 Vict.
c. 79.

Power to obtain certificates of fitness for employment in workshops.

Power to require certificates of fitness for employment in certain workshops.

Power of inspector to require surgical certificate of capacity for work.

Attendance at school of children employed in factory or workshop.

65. In order to enable occupiers of workshops to better secure the observance of this Act, and prevent the employment in their workshops of young persons under the age of sixteen years and children who are unfitted for that employment, an occupier of a workshop may obtain, if he thinks fit, from the certifying surgeon for the district, certificates of the fitness of young persons under the age of sixteen years and children for employment in his workshop, in like manner as if that workshop were a factory, and the certifying surgeon shall examine the young persons and children, and grant certificates accordingly.

66.—(1.) Where it appears to the Secretary of State that by reason of special circumstances affecting any class of workshops it is expedient for protecting the health of the young persons under the age of sixteen years, and of the children employed therein, to extend thereto the prohibition in this section mentioned, he may, by Special Order, extend to that class of workshops the prohibition in this Act of the employment of young persons under the age of sixteen years and children without a certificate of the fitness of the young person or child for employment, and thereupon the provisions of this Act with respect to certificates of fitness for employment shall apply to the class of workshops named in the order in like manner as if they were factories.

(2.) If the prohibition is proved to the satisfaction of the Secretary of State to be no longer necessary for the protection of the health of the young persons under the age of sixteen years and the children employed in any class of workshops to which it has been extended under this section, he may, by Special Order, rescind the order of extension, without prejudice to the subsequent making of another order.

67. Where an inspector is of opinion that a young person under the age of sixteen years or a child is by disease or bodily infirmity incapacitated for working daily for the time allowed by law in the factory or workshop in which he is employed, he may serve written notice thereof on the occupier of the factory or workshop, requiring that the employment of that young person or child be discontinued from the period named therein, not being less than one nor more than seven days after the service of the notice, and the occupier shall not continue after the period named in the notice to employ that young person or child (notwithstanding that a certificate of fitness has been previously obtained for the young person or child), unless the certifying surgeon for the district has, after the service of the notice, personally examined the young person or child, and has certified that the young person or child is not so incapacitated as aforesaid.

PART III.—EDUCATION OF CHILDREN.

68.—(1.) The parent of a child employed in a factory or workshop shall cause that child to attend some recognised efficient school (which school may be selected by the parent), as follows:—

- (a) The child, when employed in a morning or afternoon set, must in every week, during any part of which he is so employed, be caused to attend on each work day for at least one attendance; and
- (b) The child, when employed on the alternate day system, must on each work day preceding each day of employment be caused to attend for at least two attendances;
- (c) An attendance for the purposes of this section shall be an attendance as defined for the time being by the Secretary of State with the consent of the Board of Education, and be between the hours of eight in the morning and six in the evening:

Provided as follows:—

- (i) A child shall not be required by this Act to attend school on

Saturday or on any holiday or half holiday allowed under this Act in the factory or workshop in which the child is employed :

- (ii) The non-attendance of a child shall be excused on every day on which he is certified by the teacher of the school to have been prevented from attending by sickness or other unavoidable cause, and when the school is closed during the ordinary holidays or for any other temporary cause :
- (iii) Where there is not within the distance of two miles, measured according to the nearest road, from the residence of the child, a recognised efficient school which the child can attend, attendance at a school temporarily approved in writing by an inspector, although not a recognised efficient school, shall for the purposes of this Act be deemed attendance at a recognised efficient school until such recognised efficient school as aforesaid is established, and with a view to such establishment the inspector shall immediately report to the Board of Education every case of the approval of a school by him under this section.

(2.) A child who has not in any week attended school for all the attendances required by this section must not be employed in the following week until he has attended school for the deficient number of attendances.

(3.) The Board of Education shall, by the publication of lists or of notices or otherwise as they think expedient, provide for giving to all persons interested information of the schools in each school district which are recognised efficient schools.

69.—(1.) The occupier of a factory or workshop in which a child is employed shall on Monday in every week (after the first week in which the child began to work therein), or on some other day appointed for that purpose by an inspector, obtain from the teacher of the recognised efficient school attended by a child a certificate (according to the prescribed form and directions) respecting the attendance of the child at school in accordance with this Act.

(2.) If a child is employed without such certificate being obtained as is required by this section, the child shall be deemed to be employed contrary to the provisions of this Act.

(3.) The occupier shall keep every such certificate for two months after the date thereof, if the child so long continues to be employed in his factory or workshop, and shall produce the same to an inspector when required during that period.

70. The persons who manage a recognised efficient school attended by a child employed in a factory or workshop, or some person authorised by them may (if fees for children may be charged in that school) apply in writing to the occupier of the factory or workshop to pay a weekly sum specified in the application, not exceeding threepence and not exceeding one-twelfth part of the wages of the child, and after that application the occupier, so long as he employs the child, shall be liable to pay to the applicants, while the child attends their school, that weekly sum, and the sum may be recovered as a debt, and the occupier may deduct the sum so paid by him from the wages payable for the services of the child.

71.—(1.) When a child of the age of thirteen years has obtained from a person authorised by the Board of Education a certificate of having attained such standard of proficiency in reading, writing, and arithmetic, or such standard of previous due attendance at a certified efficient school as is mentioned in this section, that child shall be deemed to be a young person for the purposes of this Act.

(2.) The standards of proficiency and due attendance for the purposes of this section shall be such as may be from time to time fixed for the purposes of this Act by the Secretary of State, with the consent of the Board of Education, and the standards so fixed shall be published in

Obtaining of school attendance certificate by occupier.

Payment by occupier of sum for schooling.

Employment as young person of child of 13 on obtaining educational certificate.

the London Gazette, and shall not have effect until the expiration of at least six months after such publication.

(3.) Attendance at a certified day industrial school shall be deemed for the purposes of this section to be attendance at a certified efficient school.

Definitions of
"certified
efficient
school," and
"recognised
efficient
school."

72.—(1.) In this Act—

The expression "certified efficient school" means a public elementary school within the meaning of the Elementary Education Acts, 1870 to 1900, and any workhouse school in England certified to be efficient by the Local Government Board, and any elementary school which is not conducted for private profit and is open at all reasonable times to the inspection of His Majesty's inspectors of schools, and requires the like attendance from its scholars as is required in a public elementary school, and keeps such registers of those attendances as are for the time being required by the Board of Education, and is certified by the Board to be an efficient school; and

The expression "recognised efficient school" means a certified efficient school, and any school which the Board of Education have not refused to take into consideration under the Elementary Education Act, 1870, as a school giving efficient elementary education to and suitable for the children of a school district, and which is recognised for the time being by an inspector under this Act as giving efficient elementary education.

(2.) An inspector shall immediately report to the Board of Education every school recognised by him as giving efficient elementary education.

33 & 34 Vict.
c. 75.

PART IV.—DANGEROUS AND UNHEALTHY INDUSTRIES.

(i.) *Special Provisions.*

Notification
of certain
diseases
contracted
in factory
or workshop.

73.—(1.) Every medical practitioner attending on or called in to visit a patient whom he believes to be suffering from lead, phosphorus, arsenical or mercurial poisoning, or anthrax, contracted in any factory or workshop, shall (unless the notice required by this sub-section has been previously sent) send to the Chief Inspector of Factories at the Home Office, London, a notice stating the name and full postal address of the patient and the disease from which, in the opinion of the medical practitioner, the patient is suffering, and shall be entitled in respect of every notice sent in pursuance of this section to a fee of two shillings and sixpence, to be paid as part of the expenses incurred by the Secretary of State in the execution of this Act.

(2.) If any medical practitioner, when required by this section to send a notice, fails forthwith to send the same, he shall be liable to a fine not exceeding forty shillings.

(3.) Written notice of every case of lead, phosphorus, or arsenical or mercurial poisoning, or anthrax, occurring in a factory or workshop, shall forthwith be sent to the inspector and to the certifying surgeon for the district; and the provisions of this Act with respect to accidents shall apply to any such case in like manner as to any such accident as is mentioned in those provisions.

(4.) The Secretary of State may, by Special Order, apply the provisions of this section to any other disease occurring in a factory or workshop, and thereupon this section and the provisions referred to therein shall apply accordingly.

74. If in a factory or workshop where grinding, glazing, or polishing on a wheel, or any process is carried on by which dust, or any gas, vapour, or other impurity, is generated and inhaled by the workers to an injurious

Provision as
to ventilation
by fan in
certain
factories and
workshops.

extent (l), it appears to an inspector that such inhalation could be to a great extent prevented by the use of a fan or other mechanical means, the inspector may direct that a fan or other mechanical means of a proper construction for preventing such inhalation be provided within a reasonable time : and if the same is not provided, maintained, and used, the factory or workshop shall be deemed not to be kept in conformity with this Act.

75.—(1.) In every factory or workshop where lead, arsenic, or any other poisonous substance is used, suitable washing conveniences must be provided for the use of the persons employed in any department where such substances are used.

(2.) In any factory or workshop where lead, arsenic, or other poisonous substance is so used as to give rise to dust or fumes, a person shall not be allowed to take a meal, or to remain during the times allowed to him for meals, in any room in which any such substance is used, and suitable provision shall be made for enabling the persons employed in such rooms to take their meals elsewhere in the factory or workshop.

(3.) A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

76.—(1.) A woman, young person, or child must not be employed in any part of a factory in which wet-spinning is carried on, unless sufficient means are employed and continued for protecting the workers from being wetted, and, where hot water is used, for preventing the escape of steam into the room occupied by the workers.

(2.) A factory in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

77.—(1.) In the part of a factory or workshop in which there is carried on—

(a) the process of silvering of mirrors by the mercurial process ; or

(b) the process of making white lead,

a young person or child must not be employed.

(2.) In the part of a factory in which the process of melting or annealing glass is carried on a female young person or a child must not be employed.

(3.) In a factory or workshop in which there is carried on—

(a) the making or finishing (m) of bricks or tiles not being ornamental tiles ; or

(b) the making or finishing of salt,

a girl under the age of sixteen years must not be employed.

(4.) In the part of a factory or workshop in which there is carried on—

(a) any dry grinding in the metal trade : or

(b) the dipping of lucifer matches,

a child must not be employed.

(5.) Notice of a prohibition contained in this section must be affixed in the factory or workshop to which it applies.

78.—(1.) A woman, young person, or child must not be allowed to take a meal or to remain during the times allowed for meals in the following factories or workshops, or parts of factories or workshops ; that is to say,—

(a) in the case of glass works, in any part in which the materials are mixed ; and

(b) in the case of glass works where flint glass is made, in any part in which the work of grinding, cutting, or polishing is carried on ; and

Lavatories and meals in certain dangerous trades.

Restrictions as to employment in wet-spinning.

Prohibition of employment of young persons and children in certain factories and workshops.

Prohibition of taking meals in certain parts of factories and workshops.

(l) It is not necessary to prove actual injury to the health of any particular person ; the question is whether the tendency is to injure the workers : *Hoare v. Ritchie*, (1901) 1 K. B. 434.

(m) *Squire v. Stanley Brothers*, 84 L. T. Rep. 535.

(c) in the case of lucifer-match works, in any part in which any manufacturing process or handicraft (except that of cutting the wood) is usually carried on; and

(d) in the case of earthenware works, in any part known or used as dippers house, dippers drying room, or china scouring room.

(2.) If a woman, young person, or child is allowed to take a meal or to remain during the times allowed for meals in a factory or workshop or part thereof in contravention of this section, the woman, young person, or child shall be deemed to be employed contrary to the provisions of this Act.

(3.) Notice of the prohibition in this section shall be affixed in every factory or workshop to which it applies.

(4.) Where it appears to the Secretary of State that by reason of the nature of the process in any class of factories or workshops or parts thereof not named in this section the taking of meals therein is specially injurious to health, he may, if he thinks fit, by Special Order, extend the prohibition in this section to the class of factories or workshops or parts thereof.

(5.) If the prohibition in this section is proved to the satisfaction of the Secretary of State to be no longer necessary for the protection of the health of women, young persons, and children in any class of factories or workshops or parts thereof to which it has been so extended, he may, by Special Order, rescind the order of extension, without prejudice to the subsequent making of another order.

(ii.) *Regulations for Dangerous Trades.*

Power to make regulations for safety of persons employed in dangerous trades.

79. Where the Secretary of State is satisfied that any manufacture, machinery, plant, process, or description of manual labour, used in factories or workshops, is dangerous or injurious to health or dangerous to life or limb, either generally or in the case of women, children, or any other class of persons, he may certify that manufacture, machinery, plant, process, or description of manual labour, to be dangerous; and thereupon the Secretary of State may, subject to the provisions of this Act, make such regulations as appear to him to be reasonably practicable, and to meet the necessity of the case.

Procedure for making regulations.

80.—(1.) Before the Secretary of State makes any regulations under this Act, he shall publish, in such manner as he may think best adapted for informing persons affected, notice of the proposal to make the regulations, and of the place where copies of the draft regulations may be obtained, and of the time (which shall be not less than twenty-one days) within which any objection made with respect to the draft regulations by or on behalf of persons affected must be sent to the Secretary of State.

(2.) Every objection must be in writing and state—

(a) the draft regulations or portions of draft regulations objected to;

(b) the specific grounds of objection; and

(c) the omissions, additions, or modifications asked for.

(3.) The Secretary of State shall consider any objection made by or on behalf of any persons appearing to him to be affected which is sent to him within the required time, and he may, if he thinks fit, amend the draft regulations, and shall then cause the amended draft to be dealt with in like manner as an original draft.

(4.) Where the Secretary of State does not amend or withdraw any draft regulations to which any objection has been made, then (unless the objection either is withdrawn or appears to him to be frivolous) he shall, before making the regulations, direct an inquiry to be held in the manner herein-after provided.

Inquiries.

81.—(1.) The Secretary of State may appoint a competent person to hold an inquiry with regard to any draft regulations, and to report to him thereon.

(2.) The inquiry shall be held in public, and the chief inspector and any objector and any other person who, in the opinion of the person holding the inquiry, is affected by the draft regulations, may appear at the inquiry either in person or by counsel, solicitor, or agent.

(3.) The witnesses on the inquiry may, if the person holding it thinks fit, be examined on oath.

(4.) Subject as aforesaid, the inquiry and all proceedings preliminary and incidental thereto shall be conducted in accordance with rules made by the Secretary of State.

(5.) The fee to be paid to the person holding the inquiry shall be such as the Secretary of State may direct, and shall be deemed to be part of the expenses of the Secretary of State in the execution of this Act.

82.—(1.) The regulations made under the foregoing provisions of this Act may apply to all the factories and workshops in which the manufacture, machinery, plant, process, or description of manual labour, certified to be dangerous is used (whether existing at the time when the regulations are made or afterwards established) or to any specified class of such factories or workshops. They may provide for the exemption of any specified class of factories or workshops either absolutely or subject to conditions.

Application
of regulations.

(2.) The regulations may apply to tenement factories and tenement workshops, and in such case may impose duties on occupiers who do not employ any person, and on owners.

(3.) No person shall be precluded by any agreement from doing, or be liable under any agreement to any penalty or forfeiture for doing, such acts as may be necessary in order to comply with the provisions of any regulation made under this Act.

83. Regulations made under the foregoing provisions of this Act may, among other things,—

Provisions
which may
be made by
regulations.

(a) prohibit the employment of, or modify or limit the period of employment of, all persons or any class of persons in any manufacture, machinery, plant, process, or description of manual labour certified to be dangerous; and

(b) prohibit, limit, or control the use of any material or process; and

(c) modify or extend any special regulations for any class of factories or workshops contained in this Act.

84. Regulations made under the foregoing provisions of this Act shall be laid as soon as possible before both Houses of Parliament, and if either House within the next forty days after the regulations have been laid before that House, resolve that all or any of the regulations ought to be annulled, the regulations shall, after the date of the resolution, be of no effect, without prejudice to the validity of anything done in the meantime thereunder, or to the making of any new regulations. If one or more of a set of regulations are annulled, the Secretary of State may, if he thinks fit, withdraw the whole set.

Regulations
to be laid
before
Parliament.

85.—(1.) If any occupier, owner, or manager, who is bound to observe any regulation under this Act, acts in contravention of or fails to comply with the regulation, he shall be liable for each offence to a fine not exceeding ten pounds, and, in the case of a continuing offence, to a fine not exceeding two pounds for every day during which the offence continues after conviction therefor.

Breach of
regulations.

(2.) If any person other than an occupier, owner, or manager, who is bound to observe any regulation under this Act, acts in contravention of, or fails to comply with, the regulation, he shall be liable for each offence to a fine not exceeding two pounds; and the occupier of the factory or workshop shall also be liable to a fine not exceeding ten pounds, unless he proves that he has taken all reasonable means by publishing, and to the best of his power enforcing, the regulations to prevent the contravention or non-compliance.

86.—(1.) Notice of any regulations having been made under the foregoing provisions of this Act, and of the place where copies of them

Publication of
regulations.

can be purchased, shall be published in the London, Edinburgh, and Dublin Gazettes.

(2.) Printed copies of all regulations for the time being in force under this Act in any factory or workshop shall be kept posted up in legible characters in conspicuous places in the factory or workshop where they may be conveniently read by the persons employed. In a factory or workshop in Wales or Monmouthshire the regulations shall be posted up in the Welsh language also.

(3.) A printed copy of all such regulations shall be given by the occupier to any person affected thereby on his or her application.

(4.) If the occupier of any factory or workshop fails to comply with any provision of this section as to posting up or giving copies, he shall be liable to a fine not exceeding ten pounds.

(5.) Every person who pulls down, injures, or defaces any regulations posted up in pursuance of this Act, or any notice posted up in pursuance of the regulations, shall be liable to a fine not exceeding five pounds.

(6.) Regulations for the time being in force under this Act shall be judicially noticed.

PART V.—SPECIAL MODIFICATIONS AND EXTENSIONS.

(i.) *Tenement Factories.*

Duties of
owner of
tenement
factory.

87.—(1.) The owner (whether or not he is one of the occupiers) of a tenement factory shall, instead of the occupier, be liable for the observance, and punishable for non-observance, of the following provisions of this Act, namely, the provisions with respect to—

- (i.) the cleanliness, freedom from effluvia, overcrowding and ventilation of factories, contained in section one of this Act, including, so far as they relate to any engine-house, passage, or staircase, or to any room which is let to more than one tenant, the provisions with respect to limewashing and washing of the interior of a factory ;
- (ii.) the fencing of machinery, and penal compensation for neglect to fence machinery in a factory, except so far as relates to such parts of the machinery as are supplied by the occupier ;
- (iii.) the notices to be affixed in a factory with respect to the period of employment, times for meals, and system of employment of children ;
- (iv.) the prevention of the inhalation of dust, gas, vapour, or other impurity, so far as that provision requires the supply of pipes or other contrivances necessary for working the fan or other means for that purpose ; and
- (v.) the affixing of an abstract and notices in a factory.

Provided that any occupier may affix in his own tenement the notice with respect to the period of employment, times for meals, and system of employment of children, and thereupon that notice shall, with respect to persons employed by that occupier, have effect in substitution for the corresponding notice affixed by the owner.

(2.) The provisions of this Act with respect to the power to make orders in the case of dangerous premises shall apply in the case of a tenement factory as if the owner were substituted for the occupier.

(3.) In the case of any tenement factory or class of tenement factories used wholly or partly for the weaving of cotton cloth, the owner shall, if the Secretary of State by order so directs, be substituted for the occupier for the purpose of the requirements of section seven and section ninety-four of this Act or of any order of the Secretary of State with respect to ventilation.

(4.) Where, by or under this section, the owner of a tenement factory is substituted for the occupier with respect to any provisions of this Act, any summons, notice, or proceeding, which for the purpose of any

of those provisions is by this Act required or authorised to be served on or taken in relation to the occupier, is hereby required or authorised (as the case may be) to be served on or taken in relation to the owner.

88.—(1.) Where grinding is carried on in a tenement factory, the owner of the factory shall be responsible for the observance of the regulations set forth in the Third Schedule to this Act.

Regulations
as to grinding
of cutlery in
tenement
factory.

(2.) In every such tenement factory it shall be the duty of the owner and of the occupier of the factory respectively to see that such part of the horsing chains and of the hooks to which the chains are attached as are supplied by them respectively are kept in efficient condition.

(3.) In every tenement factory where grinding of cutlery is carried on, the owner of the factory shall provide that there shall at all times be instantaneous communication between each of the rooms in which the work is carried on and both the engine-room and the boiler-house.

(4.) A tenement factory in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act, but for the purposes of any proceeding in respect of a provision for the observance of which the owner of the factory is responsible, that owner shall be substituted for the occupier of the factory.

(5.) This section shall not apply to a textile factory.

89. A certificate of the fitness of any young person or child for employment in a tenement factory shall be valid for his similar employment in any part of the same tenement factory.

Certificate of
fitness in
tenement
factory.

(ii.) *Cotton Cloth and other Humid Factories.*

90. In every room, shed, or workshop, or part thereof, in which the weaving of cotton cloth is carried on (in this Act referred to as a "cotton cloth factory"), the following provisions shall have effect :

Temperature
and humidity.

(1.) The amount of moisture in the atmosphere must not at any time be in excess of such amount as is represented by the number of grains of moisture per cubic foot of air shown in column I. of the table in the Fourth Schedule to this Act opposite to such figure in column II. as represents the temperature existing in the cotton cloth factory at that time :

Provided that the temperature shall not at any time be raised by any artificial means whatsoever (except by gas used for lighting purposes only) above seventy degrees, except in so far as may be necessary in the process of giving humidity to the atmosphere.

(2.) The fact that one of the wet-bulb thermometers in the factory gives a higher reading than the figure shown in column III. of the said table opposite to such figure in column II. as represents the temperature existing in the factory, shall be evidence that the amount of moisture in the atmosphere exceeds the limit prescribed by this section.

91. The Secretary of State may by order repeal or vary the table in the Fourth Schedule to this Act, and substitute any new or amended table therefor :

Power to
alter table of
humidity.

Provided as follows :—

(a) The varied or substituted table shall be laid in a complete form before both Houses of Parliament if Parliament is sitting, or if not, then within three weeks after the beginning of the next ensuing session of Parliament ; and if the table is disapproved by either House of Parliament within forty days after having been so laid before Parliament, the table shall be void and of no effect :

(b) The table shall not come into operation until it has been laid before Parliament for forty days ; but after the expiration of those forty days, if the table has not been disapproved of as aforesaid, the Secretary of State shall cause a copy thereof to

Employment
of thermo-
meters.

be published in the London Gazette, and to be given to every occupier of a cotton cloth factory who, in pursuance of this Act, has given notice of humidity of the atmosphere being artificially produced in that factory, and after the expiration of fourteen days from the first publication thereof in the London Gazette, the varied or substituted table shall be deemed to be the table in the Fourth Schedule to this Act.

92.—(1.) In every cotton cloth factory, for the purpose of recording the humidity of the atmosphere and the temperature there must be provided, maintained, and kept in correct working order two sets of standardised wet and dry bulb thermometers.

(2.) The following regulations shall be observed with reference to the employment of such thermometers :—

- (a) One set of thermometers is to be fixed in the centre and one at the side of the factory, or in such other position as is directed or sanctioned by an inspector, so as to be plainly visible to the workers :
- (b) The occupier or manager or person for the time being in charge of the factory shall read the thermometers thrice in the day, namely, between seven and eight o'clock in the forenoon, between ten and eleven o'clock in the forenoon, and between three and four o'clock in the afternoon, on every day on which any workers are employed in the factory, and shall record the readings of each thermometer at each of those times on a form provided for the purpose for each set of thermometers in accordance with the form of record and the regulations contained in the Fourth Schedule to this Act ;
- (c) The form in which the readings of each thermometer are to be recorded must be kept hung up near the thermometers, and after being duly filled up, must be forwarded at the end of each month to the inspector of the district, and a copy must be kept at the factory for reference :
- (d) There must be kept hanging up in a frame, and properly glazed, in a conspicuous position and near to each set of thermometers, a copy of the table set out in the Fourth Schedule to this Act ;
- (e) Each form shall be *prima facie* evidence of the humidity of the atmosphere and temperature in the factory in which the form was hung up.

Notices and
inspections
where
humidity is
artificially
produced.

93.—(1.) The occupier of every cotton cloth factory in which humidity of the atmosphere is produced by any artificial means whatsoever (except by gas used for lighting purposes only) shall, at or before the time at which such artificial production of humidity is commenced, give notice thereof in writing to the chief inspector of factories.

(2.) Every factory in respect of which any such notice has been given shall be visited by an inspector once at least in every three months. The inspector shall examine into the temperature, humidity of the atmosphere, ventilation, and quantity of fresh air in the factory, and shall report to the chief inspector of factories in the prescribed form.

(3.) If at any time the occupier of any factory in respect of which any such notice has been given ceases to produce humidity by artificial means, he may give notice in writing of such cessation, and from the date of that notice, and so long as humidity is not artificially produced in the factory, the provisions of this section shall not apply to that factory.

94. In every cotton cloth factory the following regulations for the protection of health shall have effect, viz. :—

- (1.) The water used for the purpose of producing humidity shall either be taken from a public supply of drinking water or other source of pure water, or shall be effectively purified to the satisfaction of the inspector before being introduced in the form of steam into the factory, and all ducts for the introduction of humidified air shall be kept clean.

Regulations
for the pro-
tection of
health.

- (2.) The pipes used for the introduction of steam into a cotton cloth factory in which the temperature is seventy degrees Fahrenheit or over shall, so far as they are within the shed, be as small both in diameter and length as is reasonably practicable, and shall be effectively covered with non-conducting material to the satisfaction of the inspector, so as to minimise the amount of heat thrown off by them into the shed.
- (3.) In the case of a cotton cloth factory in which humidity of the atmosphere is produced by any artificial means whatsoever (except by gas used for lighting purposes only), the arrangements for ventilation shall be such that during working hours in no part of the cotton cloth factory shall the proportion of carbonic acid (carbon dioxide) in the air be greater than nine volumes of carbonic acid to every ten thousand volumes of air.
- (4.) Unless some other method certified by the inspector to be equally satisfactory is adopted, the outside of the roof of every cotton cloth factory shall be whitewashed every year before the thirty-first day of May, and such whitewash shall be effectively maintained until the thirty-first day of August.
- (5.) In every cotton cloth factory erected after the second day of February one thousand eight hundred and ninety-eight a sufficient and suitable cloak room, or cloak rooms, shall be provided for the use of all the persons employed therein, and shall be ventilated and kept at a suitable temperature.

95. If in the case of any cotton cloth factory there is a contravention of or non-compliance with any of the foregoing provisions with regard to cotton cloth factories, the inspector shall give notice in writing to the occupier of the factory of the acts or omissions constituting the contravention or non-compliance, and if those acts or omissions, or any of them, are continued or not remedied, or are repeated within twelve months after the notice has been given, the occupier of the factory shall be liable, for the first offence to a fine not less than five pounds and not exceeding ten pounds, and for every subsequent offence to a fine not less than ten pounds and not exceeding twenty pounds.

Penalties for non-compliance.

96. The foregoing provisions of this Act with respect to cotton cloth factories shall apply to every textile factory in which atmospheric humidity is artificially produced by steaming or other mechanical appliances, and in which regulations under Part IV. of this Act with respect to humidity are not for the time being in force, but subject to the following qualifications, namely:—

Application of foregoing provisions to other humid factories.

- (a) The Secretary of State may by special order modify the provisions of the Fourth Schedule to this Act with respect to the maximum limits of humidity;
- (b) The reading of the thermometer between seven and eight o'clock in the forenoon shall not be required; and
- (c) Section ninety-four respecting regulations for the protection of health in cotton cloth factories shall not apply; and
- (d) The regulations in section ninety-two distinguished as (b), (c), (d), and (e) which are required to be observed with reference to the employment of thermometers shall not apply to cotton spinning mills.

(iii.) *Bakehouses.*

97.—(1.) It shall not be lawful to let or suffer to be occupied or to occupy any room or place as a bakehouse, unless the following regulations are complied with:—

Sanitary regulations for bakehouses.

- (a) A watercloset, earthcloset, privy, or ashpit must not be within or communicate directly with the bakehouse;
- (b) Every cistern for supplying water to a bakehouse must be separate and distinct from any cistern for supplying water to a watercloset;

(c) A drain or pipe for carrying off faecal or sewage matter must not have an opening within the bakehouse.

(2.) If any person lets or suffers to be occupied or occupies any room or place as a bakehouse in contravention of this section he shall be liable to a fine not exceeding forty shillings, and to a further fine not exceeding five shillings for every day during which any room or place is so occupied after a conviction under this section.

Penalty for
bakehouse
being
unfit on
sanitary
grounds.

98.—(1.) Where a court of summary jurisdiction is satisfied on the prosecution of an inspector or a district council that any room or place used as a bakehouse is in such a state as to be on sanitary grounds unfit for use or occupation as a bakehouse, the occupier of the bakehouse shall be liable to a fine not exceeding, for the first offence, forty shillings, and for any subsequent offence five pounds.

(2.) The court of summary jurisdiction, in addition to or instead of inflicting a fine, may order means to be adopted by the occupier, within the time named in the order, for the purpose of removing the ground of complaint. The court may, on application, enlarge the time so named, but if after the expiration of the time as originally named or enlarged by subsequent order the order is not complied with, the occupier shall be liable to a fine not exceeding one pound for every day that the non-compliance continues.

Limewashing,
painting, and
washing of
bakehouses.

99.—(1.) All the inside walls of the rooms of a bakehouse, and all the ceilings or tops of those rooms (whether those walls, ceilings, or tops are plastered or not), and all the passages and staircases of a bakehouse, must either be painted with oil or varnished or be limewashed, or be partly painted or varnished and partly limewashed; and

(a) where the bakehouse is painted with oil or varnished, there must be three coats of paint or varnish, and the paint or varnish must be renewed once at least in every seven years, and must be washed with hot water and soap once at least in every six months; and

(b) where the bakehouse is limewashed, the limewashing must be renewed once at least in every six months.

(2.) A bakehouse in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

Provision as
to sleeping
places near
bakehouses.

100.—(1.) A place on the same level with a bakehouse, and forming part of the same building, may not be used as a sleeping place, unless it is constructed as follows, that is to say

(a) is effectually separated from the bakehouse by a partition extending from the floor to the ceiling; and

(b) has an external glazed window of at least nine superficial feet in area, of which at least four and a half superficial feet are made to open for ventilation.

(2.) If any person lets or occupies or continues to let or knowingly suffers to be occupied any place contrary to this section he shall be liable to a fine not exceeding, for the first offence, twenty shillings, and for any subsequent offence five pounds.

Prohibition
of under-
ground bake-
houses.

101.—(1.) An underground bakehouse shall not be used as a bakehouse unless it was so used (*n*) at the passing of this Act.

(2.) Subject to the foregoing provision, after the first day of January one thousand nine hundred and four an underground bakehouse shall not be used unless certified by the district council to be suitable for that purpose.

(3.) For the purpose of this section an underground bakehouse shall mean a bakehouse, any baking room of which is so situate that the surface of the floor is more than three feet below the surface of the footway of

(*n*) This includes premises which had been used as a bakehouse, and which at the passing of the Act, though not then in actual use, were advertised by the owner to be let as a bakehouse. *Schweizerhof v. Watkins*, (1898) 1 Q. B. 640.

the adjoining street, or of the ground adjoining or nearest to the room. The expression "baking room" means any room used for baking, or for any process incidental thereto.

(4.) An underground bakehouse shall not be certified as suitable unless the district council is satisfied that it is suitable as regards construction, light, ventilation, and in all other respects.

(5.) This section shall have effect as if it were included among the provisions relating to bakehouses which are referred to in section twenty-six of the Public Health (London) Act, 1891. 54 & 55 Vict. c. 76.

(6.) If any place is used in contravention of this section it shall be deemed to be a workshop not kept in conformity with this Act.

(7.) In the event of the refusal of a certificate by the district council, the occupier of the bakehouse may, within twenty-one days from the refusal, by complaint apply to a court of summary jurisdiction, and if it appears to the satisfaction of the court that the bakehouse is suitable for use as regards construction, light, ventilation, and in all other respects, the court shall thereupon grant a certificate of suitability of the bakehouse, which shall have effect as if granted by the district council.

(8.) Where any place has been let as a bakehouse, and the certificate required by this section cannot be obtained unless structural alterations are made, and the occupier alleges that the whole or part of the expenses of the alterations ought to be borne by the owner, he may by complaint apply to a court of summary jurisdiction, and that court may make such order concerning the expenses or their apportionment as appears to the court to be just and equitable, under the circumstances of the case, regard being had to the terms of any contract between the parties, or in the alternative the court may, at the request of the occupier, determine the lease.

102. As respects every retail bakehouse, the provisions of this Part of this Act shall be enforced by the district council of the district in which the retail bakehouse is situate, and not by an inspector; and for the purposes of this section the medical officer of health of the district council shall have and may exercise all the powers of entry, inspection, taking legal proceedings and otherwise of an inspector. Enforcement of law as to retail bakehouses by sanitary authorities.

In this section the expression "retail bakehouse" means any bakehouse or place, not being a factory, the bread, biseuits, or confectionery baked in which are sold, not wholesale, but by retail, in some shop or place occupied with the bakehouse.

(iv.) *Laundries.*

103.—(1.) In every laundry carried on by way of trade, or for purposes of gain, the following provisions shall apply:— Application of Act to laundries.

(a) The period of employment, exclusive of meal hours and absence from work, shall not exceed, for women fourteen hours, for young persons twelve hours, and for children ten hours in any consecutive twenty-four hours; nor a total for women and young persons of sixty hours, and for children of thirty hours in any one week, in addition to such overtime as may be allowed in the case of women;

(b) A woman, young person, or child must not be employed continuously for more than five hours without an interval of at least half an hour for a meal;

(c) Women, young persons, and children employed in the laundry shall have allowed to them the same holidays as are allowed to women, young persons, and children employed in a factory or workshop under this Act;

(d) So far as regards provisions with respect to health and safety, accidents, education of children, notice of occupation of a factory or workshop, the affixing of abstracts and notices and the matters to be specified in those notices (so far as they apply

to laundries), powers of inspectors, fines, and legal proceedings for any failure to comply with the provisions of this section, this Act shall have effect as if every laundry in which steam, water, or other mechanical power is used in aid of the laundry process were a factory, and every other laundry were a workshop, and as if every occupier of a laundry were the occupier of a factory or of a workshop :

- (e) The notice to be affixed in the laundry shall specify the period of employment and the times for meals, but the period and times so specified may be varied before the beginning of employment on any day ;
 - (f) The provisions of this Act prohibiting the employment of women within four weeks after childbirth, and of children under the age of twelve years, shall apply to the laundry in like manner as to a factory or workshop.
- (2.) Women employed in laundries may work overtime, subject to the following conditions, namely :—
- (a) A woman must not work more than fourteen hours in any day ; and
 - (b) The overtime worked must not exceed two hours in any day ; and
 - (c) Overtime must not be worked on more than three days in any week or more than thirty days in any year ; and
 - (d) The requirements of section sixty of this Act with respect to notices must be observed.
- (3.) In the case of every laundry worked by steam, water, or other mechanical power—
- (a) a fan or other means of a proper construction must be provided, maintained, and used for regulating the temperature in every ironing-room, and for carrying away the steam in every wash-house in the laundry ; and
 - (b) all stoves for heating irons must be sufficiently separated from any ironing-room, and gas irons emitting any noxious fumes must not be used ; and
 - (c) the floors must be kept in good condition and drained in such manner as will allow the water to flow off freely.
- A laundry in which these provisions are contravened shall be deemed to be a factory not kept in conformity with this Act.
- (4) Nothing in this section shall apply to any laundry in which the only persons employed are—
- (a) inmates of any prison, reformatory, or industrial school, or other institution for the time being subject to inspection under any Act other than this Act ; or
 - (b) inmates of an institution conducted in good faith for religious or charitable purposes ; or
 - (c) members of the same family dwelling there,
- or in which not more than two persons dwelling elsewhere are employed.

(v.) *Docks.*

Application
of certain
provisions to
docks.

104.—(1.) The provisions of this Act with respect to—

- (i.) Power to make orders as to dangerous machines (section seventeen) ;
 - (ii.) Accidents ;
 - (iii.) Regulations for dangerous trades ;
 - (iv.) Powers of inspectors (section one hundred and nineteen) ; and
 - (v.) Fines in case of death or injury (section one hundred and thirty-six) ;
- shall have effect (a), as if every dock, wharf, quay, and warehouse, and

(a) Sections 104 and 105 take the place of sect. 23 of the repealed Factory and Workshop Act, 1895 (58 & 59 Vict. c. 37), which provided that certain

all machinery or plant used in the process of loading or unloading or coaling any ship in any dock, harbour, or canal were included in the word "factory," and the purpose for which the machinery or plant is used were a manufacturing process; and as if the person who by himself, his agents, or workmen, uses any such machinery or plant for the before-mentioned purpose were the occupier of the premises; and for the purpose of the enforcement of those provisions the person having the actual use or occupation of a dock, wharf, quay, or warehouse, or of any premises within the same or forming part thereof, and the person so using any such machinery or plant shall be deemed to be the occupier of a factory.

(2.) For the purposes of this section the expression "plant" includes any gangway or ladder used by any person employed to load or unload or coal a ship, and the expressions "ship" and "harbour" have the same meanings as in the Merchant Shipping Act, 1894.

57 & 58 Vict.
c. 60.

(vi.) *Buildings.*

105.—(1.) The provisions of this Act with respect to—

(i.) Power to make orders as to dangerous machines (section seven-teen);

Application
of certain
provisions
to buildings.

provisions and sections of the Factory Acts should "have effect as if (a) every dock, wharf, quay, and warehouse, and, so far as relates to the process of loading or unloading therefrom or thereto, all machinery and plant used in that process; and (b) any premises on which machinery worked by steam, water, or other mechanical power is temporarily used for the purpose of the construction of a building or any structural work in connection with a building, were included in the word "factory," and the purpose for which the machinery is used were a manufacturing process, and as if the person who by himself, his agents, or workmen temporarily uses any such machinery for the before-mentioned process were the occupier of the said premises; and for the purpose of the enforcement of those sections the person having the actual use or occupation of a dock, wharf, quay, or warehouse, or of any premises within the same or forming part thereof, and the person so using any such machinery, shall be deemed to be the occupier of a factory." On the construction of this section the following cases have been decided: Employment on a ship in a dock is employment on or in a "factory," whether the ship is being repaired in a dry dock: *Raine v. Jobson*, (1901) A. C. 404; or afloat in a wet dock: *Cattermole v. Atlantic Transport Co.*, (1902) 1 K. B. 204; disapproving of the decision in *Flowers v. Chambers*, (1899) 2 Q. B. 142. "Wharf" is here used in its ordinary and popular signification of a place contiguous to water over which goods pass in the process of loading or unloading: *Haddock v. Humphrey*, (1900) 1 Q. B. 609; a floating structure may be a wharf: *Ellis v. Cory*, (1902) 1 K. B. 38. The doctrine of *ejusdem generis* does not require that a warehouse to be within this section must be near water: *Wilmott v. Paton*, (1902) 1 K. B. 237. The process of loading a ship includes the putting back the iron beams across the hatchway after the goods have been stowed: *Stuart v. Nixon*, (1901) A. C. 79. Sub-sect. (a) does not include the process of loading a ship from a lighter alongside, though they are in a dock: *Hennessey v. McCabe*, (1900) 1 Q. B. 491. Machinery used in unloading a ship was held to be a "factory" in *Woodham v. Atlantic Transport Co.*, (1899) 1 Q. B. 15. A mortar mill used in the construction of a building and the shed in which it stood were both held to be factories within sub-sect. (b): *McNicholas v. Dawson*, (1899) 1 Q. B. 773. "Actual use or occupation" was held to apply to a person having the temporary use of part of a quay for unloading a ship: *Merrill v. Wilson*, (1901) 1 K. B. 35 (approved in *Raine v. Jobson*, (1901) A. C. 404), and to a firm of painters employing men to paint a ship lying in a dock: *Bartell v. Gray*, (1902) 1 K. B. 225. "Such machinery" (at the end of the section) includes the machinery mentioned in sub-sect. (a): *Currington v. Bannister*, (1901) 1 K. B. 20.

- (ii.) Accidents ;
- (iii.) Regulations for dangerous trades ;
- (iv.) Powers of inspectors (section one hundred and nineteen) ; and
- (v.) Fines in case of death or injury (section one hundred and thirty-six) ;

shall have effect as if any premises on which machinery worked by steam, water, or other mechanical power is temporarily used for the purpose of the construction of a building or any structural work in connection with a building were included in the word "factory," and the purpose for which the machinery is used were a manufacturing process, and as if the person who, by himself, his agents, or workmen, temporarily uses any such machinery for the before-mentioned purpose were the occupier of the said premises ; and for the purpose of the enforcement of those provisions the person so using any such machinery shall be deemed to be the occupier of a factory (*oo*).

(2.) The provisions of this Act with respect to notice of accidents, and the formal investigation of accidents, shall have effect as if—

- (a) any building which exceeds thirty feet in height, and which is being constructed or repaired by means of a scaffolding ; and
- (b) any building which exceeds thirty feet in height, and in which more than twenty persons, not being domestic servants, are employed for wages,

were included in the word "factory," and, as if, in the first case, the employer of the persons engaged in the construction or repair and, in the second case, the occupier of the building, were the occupier of a factory.

(vii.) *Railways.*

Application
of certain
provisions to
railway
sidings.

63 & 64 Vict.
c. 27.

106.—(1.) Where any line or siding not being part of a railway within the meaning of the Railway Employment (Prevention of Accidents) Act, 1900, is used in connexion with a factory or workshop, or with any place to which any of the provisions of this Act are applied, the provisions of this Act with respect to—

- (i.) Power to make orders as to dangerous machines (section seven-teen) ;
- (ii.) Accidents ;
- (iii.) Regulations for dangerous trades ;
- (iv.) Powers of inspectors (section one hundred and nineteen) ; and
- (v.) Fines in case of death or injury (section one hundred and thirty-six),

shall have effect as if the line or siding were part of the factory or workshop.

(2.) If any such line or siding is used in connexion with more than one factory or workshop belonging to different occupiers, the foregoing provisions shall have effect as if the line or siding were a separate factory.

PART VI.—HOME WORK.

107. In the case of persons employed in such classes of work as may from time to time be specified by Special Order of the Secretary of State—

- (1.) The occupier of every factory and workshop, and every contractor employed by any such occupier in the business of the factory or workshop shall—

- (a) keep in the prescribed form and manner, and with the prescribed particulars, lists showing the names and addresses of all persons directly employed by him,

Lists of
outworkers
to be kept
in certain
trades.

(oo) See note (o), *ante*, p. 762.

either as workmen or as contractors, in the business of the factory or workshop, outside the factory or workshop, and the places where they are employed ; and

(b) send to an inspector such copies of or extracts from those lists as the inspector may from time to time require ; and

(c) send on or before the first day of February and the first day of August in each year copies of those lists to the district council of the district in which the factory or workshop is situate.

(2.) Every district council shall cause the lists received in pursuance of this section to be examined, and shall furnish the name and place of employment of every outworker included in any such list whose place of employment is outside its district to the council of the district in which his place of employment is.

(3.) The lists kept by the occupier or contractor shall be open to inspection by any inspector under this Act, and by any officer duly authorised by the district council, and the copies sent to the council and the particulars furnished by one council to another shall be open to inspection by any inspector under this Act.

(4.) This section shall apply to any place from which any work is given out, and to the occupier of that place, and to every contractor employed by any such occupier in connexion with the said work, as if that place were a workshop.

(5.) In the event of a contravention of this section by the occupier of a factory, workshop, or place, or by a contractor, the occupier or contractor shall be liable to a fine not exceeding forty shillings, and in the case of a second or subsequent offence, not exceeding five pounds.

108.—(1.) If the district council within whose district is situate a place in which work is carried on for the purpose of or in connexion with the business of a factory or workshop give notice in writing to the occupier of the factory or workshop, or to any contractor employed by any such occupier, that that place is injurious or dangerous to the health of the persons employed therein, then, if the occupier or contractor after the expiration of one month from receipt of the notice gives out work to be done in that place, and the place is found by the court having cognizance of the case to be so injurious or dangerous, he shall be liable to a fine not exceeding ten pounds.

(2.) This section shall apply in the case of the occupier of any place from which any work is given out as if that place were a workshop.

(3.) This section shall not apply except in the case of persons employed in such classes of work as the Secretary of State may specify by Special Order.

109. If the occupier of a factory or workshop or of any place from which any work is given out, or any contractor employed by any such occupier, causes or allows wearing apparel to be made, cleaned, or repaired, in any dwelling-house or building occupied therewith, whilst any inmate of the dwelling-house is suffering from scarlet fever or small-pox, then, unless he proves that he was not aware of the existence of the illness in the dwelling-house, and could not reasonably have been expected to become aware of it, he shall be liable to a fine not exceeding ten pounds.

110.—(1.) If any inmate of a house is suffering from an infectious disease to which this section applies, the district council of the district in which the house is situate may make an order forbidding any work to which this section applies to be given out to any person living or working in that house, or such part thereof as may be specified in the order, and any order so made may be served on the occupier of any factory or

Employment of person in unwholesome premises.

Making of wearing apparel where there is scarlet fever or small-pox.

Prohibition of home work in places where there is infectious disease.

workshop, or any other place from which work is given out, or on the contractor employed by any such occupier.

(2.) The order may be made notwithstanding that the person suffering from an infectious disease may have been removed from the house, and the order shall be made either for a specified time or subject to the condition that the house or part thereof liable to be infected shall be disinfected to the satisfaction of the medical officer of health, or that other reasonable precautions shall be adopted.

(3.) In any case of urgency the powers conferred on the district council by this section may be exercised by any two or more members of the council acting on the advice of the medical officer of health.

(4.) If any occupier or contractor on whom an order under this section has been served contravenes the provisions of the order, he shall be liable to a fine not exceeding ten pounds.

(5.) The infectious diseases to which this section applies are the infectious diseases required to be notified under the law for the time being in force in relation to the notification of infectious diseases, and the work to which this section applies is the making, cleaning, washing, altering, ornamenting, finishing and repairing of wearing apparel and any work incidental thereto, and such other classes of work as may be specified by Special Order of the Secretary of State.

111. The application of this Act to domestic factories and domestic workshops shall be subject to the following provisions:—

(1.) The regulations with respect to the hours of employment of women, young persons, and children, shall not apply to any such factory or workshop, and in lieu thereof the following regulations shall be observed therein:—

(a) A young person or child shall not be employed in the factory or workshop except during the period of employment herein-after mentioned; and

(b) The period of employment for a young person shall, except on Saturday, begin at six o'clock in the morning and end at nine o'clock in the evening, and shall on Saturday begin at six o'clock in the morning and end at four o'clock in the afternoon; and

(c) There shall be allowed to every young person for meals and absence from work during the period of employment not less, except on Saturday, than four hours and a half, and on Saturday than two hours and a half; and

(d) The period of employment for a child on every day either shall begin at six o'clock in the morning and end at one o'clock in the afternoon, or shall begin at one o'clock in the afternoon and end at eight o'clock in the evening or on Saturday at four o'clock in the afternoon; and for the purpose of the provisions of this Act respecting education such child shall be deemed, according to circumstances, to be employed in a morning or afternoon set; and

(e) A child shall not be employed before the hour of one in the afternoon in two successive periods of seven days, nor after that hour in two successive periods of seven days; and a child shall not be employed on Saturday in any week before the hour of one in the afternoon if on any other day in the same week he has been employed before that hour, nor after that hour if on any other day of the same week he has been employed after that hour; and

(f) A child shall not be employed continuously for more than five hours without an interval of at least half-an-hour for a meal.

Application
of Act to
domestic
factories and
workshops.

- (2.) The requirement as to making certain entries and reports when a woman, young person, or child, is employed in pursuance of an exception, shall not apply except so far as may be prescribed from time to time by the Secretary of State.
- (3.) The provisions of this Act with respect to certificates of fitness for employment shall apply to a domestic factory as if it were a workshop and not a factory.
- (4.) The following provisions shall not apply to a domestic factory or to a domestic workshop, namely :—
 - (a) the provisions as to meal hours being simultaneous, and as to the prohibition of employment during meal times ;
 - (b) the provisions as to affixing notices and abstracts, and as to specifying certain matters in notices so affixed ;
 - (c) the provisions as to holidays ;
 - (d) the provisions as to notices of accidents ;
 - (e) the provisions as to the means of ventilation, the drainage of floors, and thermometers ;
 - (f) the provisions as to the keeping of a general register.
- (5.) The provisions of section one of this Act (relating to the sanitary condition of a factory) shall not apply to a domestic factory.

112. If any manufacture, process, or description of manual labour, which in pursuance of this Act has been certified by the Secretary of State to be dangerous, is carried on in a domestic factory or workshop, all the provisions of this Act shall apply, as if the place were a factory or workshop other than a domestic factory or workshop.

113. The Secretary of State shall give notice of the provisions of this Act relating to domestic factories and workshops by the publication of the prescribed abstract or otherwise as he thinks fit.

114.—(1.) The exercise in a private house or private room by the family dwelling therein, or by any of them, of manual labour by way of trade or for purposes of gain in or incidental to any of the following handicrafts, namely—

- (i.) straw plaiting, or
- (ii.) pillow-lace making, or
- (iii.) glove making,

shall not of itself constitute the house or room a workshop within the meaning of this Act.

When it is proved to the satisfaction of the Secretary of State that by reason of the light character of the handicraft carried on in any private house or private room by the family dwelling therein, or by any of them, it is expedient to extend the provisions of this sub-section to that handicraft, he may by special order extend the same accordingly. Part Two of this Act shall apply, so far as circumstances admit, as if the order were an order extending an exception.

(2.) The exercise in a private house or private room by the family dwelling therein, or by any of them, of manual labour for the purposes of gain in or incidental to any of the following purposes, namely,—

- (i.) the making of any article or of part of any article ; or
- (ii.) the altering, repairing, ornamenting, or finishing of any article ; or
- (iii.) the adapting for sale of any article,

shall not of itself constitute that house or room a workshop, where the labour is exercised at irregular intervals, and does not furnish the whole or principal means of living to the family.

115. The expressions “domestic factory” and “domestic workshop” mean a private house, room, or place which, though used as a dwelling, is by reason of the work carried on there a factory or a workshop, as the case may be, within the meaning of this Act, and in which neither steam, water, nor other mechanical power is used in aid of the manufacturing process carried on there, and in which the only persons employed are members of the same family dwelling there.

Dangerous processes in domestic factories and workshops.

Abstracts for domestic factories and workshops.

Non-application of Act to certain domestic workshops.

Definitions of “domestic factory” and “domestic workshop.”

PART VII.—PARTICULARS OF WORK AND WAGES.

Particulars
of work or
wages to
be given
to piece
workers.

116.—(1.) In every textile factory the occupier shall, for the purpose of enabling each worker who is paid by the piece to compute the total amount of wages payable to him in respect of his work, cause to be published particulars of the rate of wages applicable to the work to be done, and also particulars of the work to which that rate is to be applied, as follows :—

- (a) In the case of weavers in the worsted and woollen, other than the hosiery, trades, the particulars of the rate of wages applicable to the work done by each weaver, shall be furnished to him in writing at the time when the work is given out to him, and shall also be exhibited on a placard not containing any other matter, and posted in a position where it is easily legible :
- (b) In the case of weavers in the cotton trade, the particulars of the rate of wages applicable to the work to be done by each weaver shall be furnished to him in writing at the time when the work is given out to him, and the basis and conditions by which the prices are regulated and fixed shall also be exhibited in each room on a placard not containing any other matter, and posted in a position where it is easily legible :
- (c) In the case of every other worker, the particulars of the rate of wages applicable to the work to be done by each worker shall be furnished to him in writing at the time when the work is given out to him : provided that if the same particulars are applicable to the work to be done by each of the workers in one room it shall be sufficient to exhibit them in that room on a placard not containing any other matter, and posted in a position where it is easily legible :
- (d) Such particulars of the work to be done by each worker as affect the amount of wages payable to him shall (except so far as they are ascertainable by an automatic indicator) be furnished to him in writing at the time when the work is given out to him :
- (e) The particulars either as to rate of wages or as to work shall not be expressed by means of symbols :
- (f) Where an automatic indicator is used for ascertaining work, the indicator shall have marked on its case the number of teeth in each wheel and the diameter of the driving roller, except that in the case of spinning machines with traversing carriages the number of spindles and the length of the stretch in such machines shall be so marked in substitution for the diameter of the driving roller :
- (g) Where such particulars of the work to be done by each worker as affect the amount of wages payable to him are ascertained by an automatic indicator, and a placard containing the particulars as to the rate of wages is exhibited in each room, in pursuance of an agreement between employers and workmen, and in conformity with the requirements of this section, the exhibition thereof shall be a sufficient compliance with this section.

(2.) If the occupier fails to comply with the requirements of this section, or fraudulently uses a false indicator for ascertaining the particulars or amount of any work paid for by the piece, or if any workman fraudulently alters an automatic indicator, the occupier or workman, as the case may be, shall be liable for each offence to a fine not exceeding ten pounds, and in the case of a second or subsequent conviction within two years from the last conviction for that offence not less than one pound. Provided that an indicator shall not be deemed false if it complies with the requirements of this section.

(3.) If anyone engaged as a worker in a factory, having received any such particulars, whether they are furnished directly to him or to a fellow

workman, discloses the particulars for the purpose of divulging a trade secret he shall be liable to a fine not exceeding ten pounds.

(4.) If anyone for the purpose of obtaining knowledge of or divulging a trade secret solicits or procures a person so engaged in a factory to disclose any such particulars, or with that object pays or rewards any such person, or causes any such person to be paid or rewarded for disclosing any such particulars, he shall be liable to a fine not exceeding ten pounds.

(5.) The Secretary of State, on being satisfied by the report of an inspector that the provisions of this section are applicable to any class of non-textile factories, or to any class of workshops, may, if he thinks fit, by Special Order, apply the provisions of this section to any such class, subject to such modifications as may in his opinion be necessary for adapting those provisions to the circumstances of the case. He may also by any such order apply those provisions, subject to such modifications as may, in his opinion, be necessary for adapting them to the circumstances of the case, to any class of persons of whom lists may be required to be kept under the provisions of this Act relating to outworkers, and to the employers of those persons.

117. Every Act for the time being in force relating to weights and measures shall extend to weights, measures, scales, balances, steelyards, and weighing machines used in a factory or workshop in checking or ascertaining the wages of any person employed therein, in like manner as if they were used in the sale of goods, and as if the factory or workshop were a place where goods are kept for sale, and every such Act shall apply accordingly, and every inspector of, or other person authorised to inspect or examine, weights and measures, shall inspect, stamp, mark, search for, and examine the said weights and measures, scales, balances, steelyards, and weighing machines accordingly, and for that purpose shall have the same powers and duties as he has in relation to weights, measures, scales, balances, steelyards, and weighing machines, used in the sale of goods.

Inspection of weights and measures used in ascertaining wages.

PART VIII.—ADMINISTRATION.

(i.) *Inspection.*

118.—(1.) The Secretary of State, with the approval of the Treasury as to numbers and salaries, may appoint such inspectors (under whatever title he may from time to time fix) and such clerks and servants as he thinks necessary for the execution of this Act, and may assign to them their duties and award them their salaries, and may appoint a chief inspector with an office in London, and may regulate the cases and manner in which the inspectors, or any of them, are to execute and perform the powers and duties of inspectors under this Act, and may remove such inspectors, clerks, and servants.

Appointment and duties of inspectors and clerks and servants.

(2.) In the appointment of inspectors of factories in Wales and Monmouthshire, among candidates otherwise equally qualified, persons having a knowledge of the Welsh language shall be preferred.

(3.) Notice of the appointment of every inspector shall be published in the London Gazette.

(4.) The salaries of the inspectors, clerks, and servants, and the expenses incurred by them or by the Secretary of State in the execution of this Act, shall be paid out of moneys provided by Parliament.

(5.) A person who is the occupier of a factory or workshop, or is directly or indirectly interested therein or in any process or business carried on therein, or in a patent connected therewith, or is employed in or about a factory or workshop, shall not act as an inspector.

(6.) An inspector shall not be liable to serve in any parochial or municipal office.

(7.) Such annual report of the proceedings of the inspectors as the Secretary of State directs shall be laid before both Houses of Parliament.

Powers of
inspectors.

(8.) A reference in this Act to an inspector refers, unless it is otherwise expressed, to an inspector appointed in pursuance of this section, and a notice or other document required by this Act to be sent to an inspector shall be sent to such inspector as a Secretary of State directs, by declaration published in the London Gazette or otherwise as he thinks expedient for making the same known to all persons interested.

119.—(1.) An inspector shall, for the purpose of the execution of this Act, have power to do all or any of the following things : namely,

- (a) To enter, inspect, and examine at all reasonable times, by day and night, a factory and a workshop, and every part thereof, when he has reasonable cause to believe that any person is employed therein, and to enter by day any place which he has reasonable cause to believe to be a factory or workshop ; and
- (b) To take with him in either case a constable into a factory or workshop in which he has reasonable cause to apprehend any serious obstruction in the execution of his duty ; and
- (c) To require the production of the registers, certificates, notices, and documents kept in pursuance of this Act, and to inspect, examine, and copy the same ; and
- (d) To make such examination and inquiry as may be necessary to ascertain whether the enactments for the time being in force relating to public health and the enactments of this Act are complied with, so far as respects the factory or workshop and the persons employed therein ; and
- (e) To enter any school in which he has reasonable cause to believe that children employed in a factory or workshop are for the time being educated ; and
- (f) To examine, either alone or in the presence of any other person, as he thinks fit, with respect to matters under this Act, every person whom he finds in a factory or workshop, or such a school as aforesaid, or whom he has reasonable cause to believe to be or to have been within the preceding two months employed in a factory or workshop, and to require every such person to be so examined and to sign a declaration of the truth of the matters respecting which he is so examined ; and
- (g) To exercise such other powers as may be necessary for carrying this Act into effect.

(2.) The occupier of every factory and workshop, his agents and servants, shall furnish the means required by an inspector as necessary for an entry, inspection, examination, inquiry, or the exercise of his powers under this Act in relation to that factory or workshop.

(3.) If any person wilfully delays an inspector in the exercise of any power under this section, or fails to comply with the requisition of an inspector in pursuance of this section, or to produce any certificate or document which he is required by or in pursuance of this Act to produce, or conceals or prevents, or attempts to conceal or prevent a woman, young person, or child, from appearing before or being examined by an inspector, that person shall be deemed to obstruct an inspector in the execution of his duties under this Act :

Provided that no one shall be required under this section to answer any question or to give any evidence tending to criminate himself.

(4.) Where an inspector is obstructed in the execution of his duties under this Act, the person obstructing him shall be liable to a fine not exceeding five pounds ; and where an inspector is so obstructed in a factory or workshop, other than a domestic factory or a domestic workshop, the occupier of that factory or workshop shall be liable to a fine not exceeding five, or where the offence is committed at night twenty, pounds ; and where an inspector is so obstructed in a domestic factory or a domestic workshop, the occupier shall be liable to a fine not exceeding one pound, or where the offence is committed at night five pounds ; and in the case of a second or subsequent conviction under

section in relation to a factory within two years from the last conviction for the same offence, a fine not less than one pound shall be imposed for each offence.

120. An inspector, if so authorised in writing under the hand of the Secretary of State, may, although he is not a counsel, or solicitor, or law agent, prosecute, conduct, or defend, before a court of summary jurisdiction or justice, any information, complaint, or other proceeding arising under this Act, or in the discharge of his duty as inspector.

121. Every inspector shall be furnished with the prescribed certificate of his appointment, and on applying for admission to a factory or workshop shall, if so required, produce the said certificate to the occupier.

(ii.) *Certifying Surgeons.*

122.—(1.) Subject to such regulations as may be made by the Secretary of State, an inspector may appoint a sufficient number of duly registered medical practitioners to be certifying surgeons for the purposes of this Act, and may revoke any such appointment.

(2.) Every appointment and revocation of appointment of a certifying surgeon may be annulled by the Secretary of State upon appeal to him for that purpose.

(3.) A surgeon who is the occupier of a factory or workshop, or is directly or indirectly interested therein, or in any process or business carried on therein, or in a patent connected therewith, shall not be a certifying surgeon for that factory or workshop.

(4.) The Secretary of State may make rules for the guidance of certifying surgeons, and for the particulars to be registered respecting their visits, and for the forms of certificates and other documents to be used by them.

(5.) Every certifying surgeon shall, if so directed by the Secretary of State, make any special inquiry and re-examine any young person or child.

(6.) Every certifying surgeon shall in each year make at the prescribed time a report in the prescribed form to the Secretary of State as to the persons inspected during the year and the results of the inspection.

123. Where there is no certifying surgeon for a factory or workshop, the poor law medical officer for the district in which the factory or workshop is situate shall act for the time being as the certifying surgeon for that factory or workshop.

124.—(1.) The fees to be paid to a certifying surgeon in respect of the examination of, and grant of certificates of fitness for employment for, young persons and children, shall be regulated as follows:—

- (a) The occupier of the factory may agree with the certifying surgeon as to the amount of the fees;
- (b) In the absence of agreement the fees shall be in accordance with the scale set forth in Part I. of the Fifth Schedule to this Act, or with such scale as may be substituted therefor by the Secretary of State;
- (c) The occupier shall pay the fees on the completion of the examination, or if any certificates are granted, at the time at which the surgeon signs the certificates, or at any other time directed by an inspector;

(2.) The fees to be paid to a certifying surgeon in cases where, in pursuance of a direction of the Secretary of State or of regulations made under this Act, he is required to examine the persons employed in a factory or workshop, shall be in accordance with the scale set forth in Part II. of the Fifth Schedule to this Act, or with such scale as may be substituted therefor by the Secretary of State. Such fees shall, where the examination is in pursuance of a direction of the Secretary of State, be paid by the Secretary of State, and, where the examination is in pursuance of regulations, be paid by the occupier of the factory or workshop.

Right of inspector to conduct proceedings before magistrates.

Certificate of appointment of inspector.

Appointment and duties of certifying surgeons.

When poor law medical officer is to act as certifying surgeon.

Fees of certifying surgeons.

(3.) The fee to be paid to a certifying surgeon for the investigation of an accident in pursuance of this Act shall be such sum, not more than ten nor less than three shillings, as the Secretary of State may prescribe, and shall be paid by the Secretary of State as expenses incurred in the execution of this Act.

(iii.) *Local Authorities.*

Powers of local authorities and their officers.

125. For the purpose of their duties with respect to workshops and workplaces under this Act, and under the law relating to public health, the district council and their officers shall, without prejudice to their other powers, have all such powers of entry, inspection, taking legal proceedings, or otherwise, as an inspector under this Act.

(iv.) *Special Orders.*

Provisions as to special orders of Secretary of State.

126. The following provisions shall apply to such orders made by the Secretary of State in pursuance of this Act as are in this Act referred to as Special Orders:—

- (1.) The order shall be under the hand of the Secretary of State and shall be published in such manner as the Secretary of State thinks best adapted for the information of all persons concerned, and shall come into operation at the date of its publication, or at any later date mentioned in the order :
- (2.) The order may be temporary or permanent, conditional or unconditional, and whether granting or extending an exception or prohibition, or directing the adoption of any special means or provision, or rescinding a previous order, or effecting any other thing, may do so either wholly or partly :
- (3.) The order shall be laid as soon as may be before both Houses of Parliament, and if either House of Parliament, within the next forty days after the order has been so laid before that House, resolves that the order ought to be annulled, it shall after the date of that resolution be of no effect, without prejudice to the validity of anything done in the meantime under the order or to the making of a new order :
- (4.) The order, while it is in force, shall, so far as is consistent with the tenor thereof, apply as if it formed part of the enactment which provides for the making of the order.

(v.) *Notices, Registers, and Returns.*

Notice of occupation of factory or workshop.

127.—(1.) Every person shall, within one month after he begins to occupy a factory or workshop, serve on the inspector for the district a written notice containing the name of the factory or workshop, the place where it is situate, the address to which he desires his letters to be addressed, the nature of the work, the nature and amount of the moving power therein, and the name of the person or firm under which the business of the factory or workshop is to be carried on.

(2.) In the event of a contravention of this section by the occupier of a factory or workshop, he shall be liable to a fine not exceeding five pounds.

(3.) Where an inspector receives notice in pursuance of this section with respect to a workshop, he shall forthwith forward the notice to the district council of the district in which the workshop is situate.

Affixing of abstract and notices.

128.—(1.) There shall be affixed at the entrance of every factory and workshop, and in such other parts thereof as an inspector for the time being directs, and be constantly kept so affixed in the prescribed form and

in such position as to be easily read by the persons employed in the factory or workshop—

- (a) The prescribed abstract of this Act ; and
- (b) A notice of the name and address of the prescribed inspector ; and
- (c) A notice of the name and address of the certifying surgeon for the district ; and
- (d) A notice of the clock (if any) by which the period of employment and times for meals in the factory or workshop are regulated ; and
- (e) Every notice and document required by this Act to be affixed in the factory or workshop.

(2.) In the event of a contravention of this section in a factory or workshop, the occupier of the factory or workshop shall be liable to a fine not exceeding forty shillings.

129.—(1.) In every factory and workshop there shall be kept a register, called the general register, showing in the prescribed form the prescribed particulars as to—

General registers.

- (a) the children and young persons employed in the factory or workshop ; and
- (b) the lime-washing of the factory or workshop ; and
- (c) every accident occurring in the factory or workshop of which notice is required to be sent to an inspector ; and
- (d) every special exception of which the occupier of the factory or workshop avails himself ; and
- (e) such other matters as may be prescribed.

(2.) Where any entry is required by this Act to be made in the general register, the entry made by the occupier of a factory or workshop or on his behalf shall, as against him, be admissible as *prima facie* evidence of the facts therein stated, and the failure to make any entry so required with respect to the observance of any provision of this Act shall be admissible as *prima facie* evidence that that provision has not been observed.

(3.) The register shall at all reasonable times be open to inspection by the certifying surgeon of the district.

(4.) The occupier of a factory or workshop shall send to an inspector such extracts from the general register as the inspector from time to time requires for the execution of his duties under this Act.

(5.) If in any factory or workshop any requirement of this section is not complied with, the occupier shall be liable to a fine not exceeding five pounds.

130.—(1.) The occupier of every factory or workshop shall, on or before such days as the Secretary of State may direct, at intervals of not less than one nor more than three years, send to the Chief Inspector of Factories a correct return specifying, with respect to such day or days, or such period as the Secretary of State may direct, the number of persons employed in the factory or workshop, with such particulars as to the age, sex, and occupation, of the persons employed as the Secretary of State may direct, and in default of complying with this section shall be liable to a fine not exceeding ten pounds.

Periodical return of persons employed.

(2.) The occupier of any place to which any of the provisions of this Act apply shall, if so required by the Secretary of State, make to the Chief Inspector of Factories a like return as is required to be made by this section, and shall be liable to a like fine for default in compliance with the requirement.

131. Every district council shall keep a register of all workshops situated within their district.

Registers of workshops.

132. The medical officer of health of every district council shall, in his annual report to them, report specifically on the administration of this Act in workshops and workplaces, and he shall send a copy of his annual report, or so much of it as deals with this subject, to the Secretary of State.

Report of medical officer of health on administration of Act.

Miscellaneous Provisions.

Notice by medical officer of health of employment of woman,

young person, or child in workshops.

Certificate of birth in case of young persons under 16 and children.

133. Where any woman, young person, or child is employed in a workshop in which no abstract of this Act is affixed as by this Act required, and the medical officer of the district council becomes aware thereof, he shall forthwith give written notice thereof to the inspector for the district.

134. Where the age of any young person under the age of sixteen years or child is required to be ascertained or proved for the purposes of this Act, or for any purpose connected with the employment in labour or elementary education of the young person or child, any person shall on presenting a written requisition in such form and containing such particulars as may be from time to time prescribed by the Local Government Board, and on payment of a fee of sixpence, be entitled to obtain a certified copy under the hand of a registrar or superintendent registrar of the entry in the register, under the Births and Deaths Registration Acts, 1836 to 1874, of the birth of that young person or child; and such form of requisition shall on request be supplied without charge by every superintendent registrar and registrar of births, deaths, and marriages.

PART IX.—LEGAL PROCEEDINGS.

Fine for not keeping factory or workshop in conformity with Act.

135.—(1.) If a factory or workshop is not kept in conformity with this Act, the occupier thereof shall be liable to a fine not exceeding ten pounds, and, in the case of a second or subsequent conviction in relation to a factory within two years from the last conviction for the same offence, not less than one pound for each offence (*p*).

(2.) The court of summary jurisdiction, in addition to or instead of inflicting a fine, may order certain means to be adopted by the occupier, within the time named in the order, for the purpose of bringing his factory or workshop into conformity with this Act. The court may, on application, enlarge the time so named, but if, after the expiration of the time as originally named or enlarged by subsequent order, the order is not complied with, the occupier shall be liable to a fine not exceeding one pound for every day on which the non-compliance continues.

Fines in case of death or injury.

136. If any person is killed, or dies, or suffers any bodily injury or injury to health, in consequence of the occupier of a factory or workshop having neglected to observe any provision of this Act or any regulation made in pursuance of this Act, the occupier of the factory or workshop shall be liable to a fine not exceeding one hundred pounds, and, in the case of a second or subsequent conviction in relation to a factory within two years from the last conviction for the same offence, not less than one pound for each offence; and the whole or any part of the fine may be applied for the benefit of the injured person or his family, or otherwise as the Secretary of State determines (*q*):

Provided as follows:

(a) In the case of injury to health the occupier shall not be liable under this section unless the injury was caused directly by the neglect:

(b) The occupier shall not be liable to fine under this section if an information against him for not observing the provision or regulation to the breach of which the death or injury was

(*p*) The liability to a fine imposed for the breach of a statutory duty does not necessarily prevent a civil action in a case where a person has been injured by the breach of such statutory duty: *Graves v. Lord Wimborne*, (1898) 2 Q. B. 402.

(*q*) Contributory negligence by the person killed or injured, which would have prevented him from succeeding as plaintiff in an action for damages caused by the defendant's neglect of his statutory duties, is no answer to a complaint under this section: *Blenkinsop v. Ogden*, (1898) 1 Q. B. 783.

attributable, has been heard and dismissed previous to the time when the death or injury was inflicted.

137.—(1.) Where any person is employed in a factory or workshop, other than a domestic factory or a domestic workshop, contrary to the provisions of this Act, the occupier of the factory or workshop shall be liable to a fine not exceeding three, or if the offence was committed during the night five, pounds for each person so employed, and, in the case of a second or subsequent conviction in relation to a factory within two years from the last conviction for the same offence, not less than one pound for each offence; and where any person is so employed in a domestic factory or a domestic workshop the occupier shall be liable to a fine not exceeding one, or if the offence was committed during the night two pounds, for each person so employed, and, in the case of a second or subsequent conviction within two years from the last conviction in relation to a factory for the same offence, not less than one pound for each offence.

Fine for employing persons contrary to Act.

(2.) If a woman, young person, or child is not allowed times for meals and absence from work as required by this Act, or during any part of the times allowed for meals or absence from work is, in contravention of the provisions of this Act, employed (*r*) in the factory or workshop, or allowed to remain in any room, the woman, young person, or child shall be deemed to be employed contrary to the provisions of this Act.

138.—(1.) If a young person or child is employed in a factory or workshop contrary to the provisions of this Act, the parent of the young person or child shall be liable to a fine not exceeding twenty shillings for each offence, unless it appears to the court that the offence was committed without the consent, connivance, or wilful default, of the parent.

Fine for offence by parent.

(2.) If the parent of a child neglects to cause the child to attend school in accordance with this Act, he shall be liable to a fine not exceeding twenty shillings for each offence.

139. If any person—

- (a) forges or counterfeits any certificate for the purposes of this Act (for the forgery or counterfeiting of which no other punishment is provided); or
- (b) gives or signs any such certificate knowing the same to be false in any material particular; or
- (c) knowingly utters or makes use of any certificate so forged, counterfeited, or false as aforesaid; or
- (d) knowingly utters or makes use of as applying to any person a certificate which does not so apply; or
- (e) personates any person named in a certificate; or
- (f) falsely pretends to be an inspector; or
- (g) wilfully connives at the forging, counterfeiting, giving, signing, uttering, making use, or personating as aforesaid; or
- (h) wilfully makes a false entry in any register, notice, certificate, or document, required by this Act to be kept or served or sent; or
- (i) wilfully makes or signs a false declaration under this Act; or
- (j) knowingly makes use of any such false entry or declaration,

Forgery of certificates, false entries, and false declarations.

he shall be liable to a fine not exceeding twenty pounds, or to imprisonment for a term not exceeding three months, with or without hard labour.

140. Where an offence for which the occupier of a factory or workshop is liable under this Act to a fine has in fact been committed by some agent, servant, workman, or other person, that agent, servant, workman, or other person, shall be liable to the like fine as if he were the occupier.

Fine on person actually committing offence for which occupier is liable.

141.—(1.) Where the occupier of a factory or workshop is charged with an offence against this Act, he shall be entitled upon information duly laid by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the

Power of occupier to exempt himself from fine on conviction of the actual offender.

(*r*) See sect. 33.

charge; and if, after the commission of the offence has been proved, the occupier of the factory or workshop proves to the satisfaction of the court—

(a) that he has used due diligence to enforce the execution of this Act; and

(b) that the said other person had committed the offence in question without his knowledge, consent, or connivance, that other person shall be summarily convicted of the offence, and the occupier shall be exempt from any fine. The person so convicted shall, in the discretion of the court, be also liable to pay any costs incidental to the proceedings.

(2.) When it is made to appear to the satisfaction of an inspector at the time of discovering an offence—

(a) that the occupier of the factory or workshop has used all due diligence to enforce the execution of this Act; and

(b) by what person the offence has been committed; and

(c) that it has been committed without the knowledge, consent, or connivance of the occupier and in contravention of his orders,

the inspector shall proceed against the person whom he believes to be the actual offender without first proceeding against the occupier of the factory or workshop.

Owner of machine liable in certain cases instead of occupier.

142. Where in a factory the owner or hirer of a machine or implement moved by steam, water, or other mechanical power, is some person other than the occupier of the factory, the owner or hirer shall, so far as respects any offence against this Act committed in relation to a person who is employed in or about or in connection with that machine or implement, and is in the employment or pay of the owner or hirer, be deemed to be the occupier of the factory.

Limit to cumulative fines.

143. A person shall not be liable in respect of a repetition of the same kind of offence from day to day to any larger amount of fines than the highest fine fixed by this Act for the offence, except—

(a) where the repetition of the offence occurs after an information has been laid for the previous offence; or

(b) where the offence is one of employing two or more persons contrary to the provisions of this Act.

Prosecution of offences and recovery and application of fines.

144.—(1.) All offences under this Act shall be prosecuted, and all fines under this Act shall be recovered, on summary conviction, before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

(2.) A summary order may be made for the purposes of this Act by a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

(3.) All fines imposed in pursuance of this Act shall, save as otherwise expressly provided for by this Act, be paid into the Exchequer.

(4.) Where a proceeding is taken before a court of summary jurisdiction with respect to an offence against this Act alleged to be committed in or with reference to a factory or workshop, the occupier of the factory or workshop, and the father, son, or brother of the occupier of the factory or workshop, shall not be qualified to act as a member of the court.

(5.) A person engaged in, or being an officer of any association of persons engaged in, the same trade or occupation as a person charged with any offence under this Act shall not act as a justice of the peace in hearing and determining the charge.

145. If any person feels aggrieved by a conviction or order made by a court of summary jurisdiction on determining an information or complaint under this Act, he may appeal therefrom to quarter sessions.

146. The following provisions shall have effect with respect to summary proceedings for offences and fines under this Act:—

(1.) The information shall be laid within three months after the date at which the offence comes to the knowledge of the inspector

Appeal to quarter sessions.
Limitation of time and general provisions as to summary proceedings.

for the district within which the offence is charged to have been committed, or, in case of an inquest being held in relation to the offence, then within two months after the conclusion of the inquest, so, however, that it be not laid after the expiration of six months from the commission of the offence :

- (2.) It shall be sufficient to allege that a factory or workshop is a factory or workshop within the meaning of this Act, without more :
- (3.) It shall be sufficient to state the name of the ostensible occupier of the factory or workshop, or the title of the firm by which the occupier employing persons in the factory or workshop is usually known :
- (4.) A conviction or order made in any matter arising under this Act, either originally or on appeal, shall not be quashed for want of form, and a conviction or order made by a court of summary jurisdiction against which a person is authorised by this Act to appeal shall not be removed by certiorari or otherwise, either at the instance of the Crown or of any private person, into a superior court, except for the purpose of the hearing and determination of a special case.

147.—(1.) If a person is found in a factory or workshop, except at meal times, or while all the machinery of the factory or workshop is stopped, or for the sole purpose of bringing food to the persons employed in the factory or workshop between the hours of four and five o'clock in the afternoon, he shall, until the contrary is proved, be deemed for the purposes of this Act to have been then employed in the factory or workshop :

Evidence in
summary
proceedings.

Provided that yards, playgrounds, and places open to the public view, schoolrooms, waiting rooms, and other rooms belonging to the factory or workshop in which no machinery is used or manufacturing process carried on, shall not be taken to be any part of the factory or workshop within the meaning of this enactment : and this enactment shall not apply to a domestic factory or workshop.

(2.) Where a young person or child is, in the opinion of the court, apparently of the age alleged by the informant, it shall lie on the defendant to prove that the young person or child is not of that age.

(3.) A declaration in writing by a certifying surgeon for the district that he has personally examined a person employed in a factory or workshop in that district, and believes him to be under the age set forth in the declaration, shall be admissible in evidence of the age of that person.

(4.) A copy of a conviction for an offence against this Act purporting to be certified under the hand of the clerk of the peace having the custody of the conviction to be a true copy shall be receivable as evidence, and every such clerk of the peace shall, on the written request of an inspector and payment of a fee of one shilling, deliver to him a copy of the conviction so certified.

148. Any notice, order, requisition, summons, and document, required or authorised to be served or sent for the purposes of this Act—

Service of
notices and
documents,
&c.

(a) may be served and sent by post, or by delivering the same to or at the residence of the person on or to whom it is to be served or sent, or (where he is the owner of a factory or workshop) by delivering the same or a true copy thereof to his agent, or (where he is the occupier of a factory or workshop) by delivering the same or a true copy thereof to his agent or to some person in the factory or workshop : and

(b) Where it is required to be served on or sent to the occupier of a factory or workshop, shall be deemed to be properly addressed if addressed to the occupier of the factory or workshop at the factory or workshop, with the addition of the proper postal address, but without naming the person who is the occupier.

PART X.—SUPPLEMENTARY.

(i.) *Application and Definitions.*

Factories and work-shops to which Act applies.

149.—(1.) Subject to the provisions of this section, the following expressions have in this Act the meanings hereby assigned to them; that is to say:—

The expression "textile factory" means any premises wherein or within the close or curtilage of which steam, water, or other mechanical power, is used to move or work any machinery employed in preparing, manufacturing, or finishing, or in any process incident to the manufacture of cotton, wool, hair, silk, flax, hemp, jute, tow, china-grass, cocoa-nut fibre, or other like material, either separately or mixed together, or mixed with any other material, or any fabric made thereof:

Provided that print works, bleaching and dyeing works, lace warehouses, paper mills, flax scutch mills, rope works, and hat works, shall not be deemed to be textile factories:

The expression "non-textile factory" means—

- (a) any works, warehouses, furnaces, mills, foundries, or places named in Part One of the Sixth Schedule to this Act; and
- (b) any premises or places named in Part Two of the said schedule wherein or within the close or curtilage or precincts of which steam, water, or other mechanical power (*t*), is used in aid of the manufacturing process carried on there; and
- (c) any premises wherein or within the close or curtilage or precincts of which any manual labour is exercised by way of trade or for purposes of gain (*u*) in or incidental to any of the following purposes (*v*), namely—
 - (i) the making of any article or of part of any article; or
 - (ii) the altering, repairing, ornamenting, or finishing of any article; or
 - (iii) the adapting for sale of any article,

and wherein or within the close or curtilage or precincts of which steam, water, or other mechanical power is used in aid of the manufacturing process carried on there:

The expression "factory" means textile factory and non-textile factory, or either of those descriptions of factories:

The expression "tenement factory" means a factory where mechanical power is supplied to different parts of the same building occupied by different persons for the purpose of any manufacturing process or handicraft, in such manner that those parts constitute in law separate factories, and for the purpose of the provisions of this Act with respect to tenement factories all buildings situate within the same close or curtilage shall be treated as one building.

(*t*) See the definition of "engineering work" in sect. 7 (2) of the Workmen's Compensation Act, 1897, *ante*, p. 665.

(*u*) In a claim for compensation under the Workmen's Compensation Act, 1897, where a workman was injured while employed at a steam engine used for grinding meal on a farm, and the evidence was that the meal was intended solely for consumption by the cattle on the farm, and not for sale, it was held that the grinding of the meal was not "for purposes of gain," so as to make the farm a "non-textile factory" within this section: *Nash v. Hollinshead*, (1901) 1 K. B. 700.

(*v*) Premises used for washing bottles by a brush turned by a gas engine, and for filling the bottles, after cleaning, with beer, were held not to be a non-textile factory within similar words in sect. 93 of the Factory Act, 1878: *Law v. Graham*, (1901) 2 K. B. 327. But now bottle-washing works are specifically included (No. 28) in Part II. of Sched. VI., *post*, p. 792.

The expression "workshop" means—

- (a) any premises or places named in Part Two of the Sixth Schedule to this Act, which are not a factory; and
- (b) any premises, room, or place, not being a factory, in which premises, room, or place, or within the close or curtilage or precincts of which premises, any manual labour is exercised by way of trade or for purposes of gain in or incidental to any of the following purposes (*w*), namely—
 - (i) the making of any article or of part of any article, or
 - (ii) the altering, repairing, ornamenting, or finishing of any article; or
 - (iii) the adapting for sale of any article,

and to or over which premises, room, or place the employer of the persons working therein has the right of access or control:

The expression "workshop" includes a tenement workshop.

The expression "tenement workshop" means any workplace in which, with the permission of or under agreement with the owner or occupier, two or more persons carry on any work which would constitute the workplace a workshop if the persons working therein were in the employment of the owner or occupier.

(2.) A part of a factory or workshop may, with the approval in writing of the chief inspector, be taken for the purposes of this Act to be a separate factory or workshop.

(3.) A room solely used for the purpose of sleeping therein shall not be deemed to form part of the factory or workshop for the purposes of this Act.

(4.) Where a place situate within the close, curtilage, or precincts forming a factory or workshop is solely used for some purpose other than the manufacturing process or handicraft carried on in the factory or workshop, that place shall not be deemed to form part of the factory or workshop for the purposes of this Act, but shall, if otherwise it would be a factory or workshop, be deemed to be a separate factory or workshop, and be regulated accordingly.

(5.) A place or premises shall not be excluded from the definition of a factory or workshop by reason only that the place or premises is or are in the open air.

(6.) The exercise by any young person or child in any recognised efficient school, during a portion of the school hours, of any manual labour for the purpose of instructing the young person or child in any art or handicraft shall not be deemed to be an exercise of manual labour for the purpose of gain within the meaning of this Act.

150.—(1.) This Act applies to factories and workshops belonging to the Crown: but in case of any public emergency the Secretary of State may, by order, to the extent and during the period named by him, exempt from this Act any factory or workshop belonging to the Crown, or any factory or workshop in respect of work which is being done on behalf of the Crown under a contract specified in the order.

(2.) A factory or workshop belonging to or in the occupation of the Crown shall not be excluded from the operation of this Act by reason only that it is not carried on by way of trade or for the purpose of gain.

(3.) The powers conferred by this Act on a district council or other local authority shall, in the case of a factory or workshop belonging to or in the occupation of the Crown, be exercised by an inspector under this Act.

Application
to Crown
factories and
workshops.

(*w*) In *Fullers, Limited v. Squire*, (1901) 2 K. B. 209, a shop where sweetmeats were retailed by day, but which was used at night for the purposes of packing sweetmeats in boxes, was held to be a "workshop."

Power to treat separate branches as separate factories or workshops.

Definition of employment and working for hire.

Application of Act to London.

57 & 58 Vict. c. cxxiii

Application of Act to county boroughs. Saving for existing powers of district councils. General definitions.

38 & 39 Vict. c. 13.

"Child."

"Machinery."

"Mill-gearing."

"Night."

"Owner."

"Parent."

151. The Secretary of State may by Special Order direct, with respect to any class of factories or workshops, that different branches or departments of work carried on in the same factory or workshop shall, for all or any of the purposes of this Act, be treated as if they were different factories or workshops.

152.—(1.) A woman, young person, or child, who works in a factory or workshop, whether for wages or not, either in a manufacturing process or handicraft, or in cleaning any part of the factory or workshop used for any manufacturing process or handicraft, or in cleaning or oiling any part of the machinery, or in any other kind of work whatsoever incidental to or connected with the manufacturing process or handicraft, or connected with the article made or otherwise the subject of the manufacturing process or handicraft therein, shall, save as is otherwise provided by this Act, be deemed to be employed therein within the meaning of this Act.

(2.) For the purposes of this Act an apprentice shall be deemed to work for hire.

153.—(1.) In the application to the administrative county of London of the section of this Act relating to the means of escape from fire, the London County Council shall take the place of the district council, and their expenses in the execution of that section shall be defrayed as part of their expenses in the management of the London Building Act, 1891.

(2.) In the application to the administrative county of London of the section of this Act giving power to make byelaws providing for means of escape from fire, the reference to a district council shall be construed as a reference to the London County Council.

(3.) The power of the London County Council under section one hundred and sixty-four of the London Building Act, 1891, to make byelaws with respect to the means of escape from fire in buildings exceeding sixty feet in height shall extend to all factories and workshops whether exceeding sixty feet in height or not.

(4.) Subject as aforesaid, references in this Act to a district council and the district thereof shall, as regards the city of London, be construed as references to the court of common council and the city, and, as regards any other part of the administrative county of London, as references to the council of a metropolitan borough and the metropolitan borough.

154. References in this Act to a district council and the district thereof shall be construed as including references to the council of a county borough and the county borough.

155. The powers conferred by this Act on district councils shall be in addition to, and not in substitution for, any other powers which they may possess.

156.—(1.) In this Act unless the context otherwise requires,—

The expression "bank holiday" means a holiday under the Holidays Extension Act, 1875 :

The expression "child" means a person who is under the age of fourteen years, and who has not, being of the age of thirteen years, obtained the certificate of proficiency or attendance at school mentioned in Part III. of this Act :

The expression "machinery" includes any driving strap or band :

The expression "mill-gearing" comprehends every shaft, whether upright, oblique, or horizontal, and every wheel, drum, or pulley, or other appliance by which the motion of the first moving power is communicated to any machine appertaining to a manufacturing process :

The expression "night" means the period between nine o'clock in the evening and six o'clock in the succeeding morning :

The expression "owner" has the meaning given to it by section four of the Public Health Act, 1875 :

The expression "parent" means a parent or guardian of, or person having the legal custody of, or the control over, or having direct benefit from the wages of, a young person or child :

- The expression "prescribed" means prescribed for the time being by the Secretary of State : " Pre-scribed."
- The expression "process" includes the use of any locomotive : " Process."
- The expression "Special Order" means an order which is subject to the provisions of section one hundred and twenty-six of this Act with regard to Special Orders of the Secretary of State : " Special order."
- The expression "week" means the period between midnight on Saturday night and midnight on the succeeding Saturday night : " Week."
- The expression "woman" means a woman of the age of eighteen years and upwards : " Woman."
- The expression "young person" means a person who has ceased to be a child and is under the age of eighteen years : " Young person."
- (2.) For the purposes of this Act employment shall be deemed to be continuous unless interrupted by an interval of at least half an hour.
- (3.) The factories and workshops named in the Sixth Schedule to this Act are in this Act referred to by the names therein assigned to them.
- (4.) References in this Act to regulations made under this Act shall be construed as including references to special rules established or requirements made under any previous Act.
- 157.** The following provisions of this Act shall not apply to men's workshops, that is to say, workshops conducted on the system of not employing any woman, young person, or child therein :—
- (1.) The sections in Part I. relating to temperature, thermometers, means of ventilation, drainage of floors, sanitary conveniences, opening of doors, power to make orders as to dangerous machinery, and inquests ;
- (2.) Part II. and Part. III. ;
- (3.) The sections in Part IV. relating to fans and to lavatories and meals ;
- (4.) Part VII. ;
- (5.) The sections of Part VIII. relating to the affixing of abstracts and notices, and the keeping of a general register, and the first sub-section of the section relating to periodical returns.
- 158.** Nothing in this Act shall extend to any young person being a mechanic, artisan, or labourer, working only in repairing either the machinery in or any part of a factory or workshop.
- Men's workshops.
- Saving for young persons employed in repairs.
- (ii.) *Application of Act to Scotland and Ireland.*
- 159.** In the application of this Act to Scotland—
- (1.) The expression "certified efficient school" means any public or other elementary school under Government inspection :
- (2.) The expression "district council" and the expression "district" used with reference to such council mean the local authority under the Public Health (Scotland) Act, 1897, and their district :
- (3.) The expression "medical officer of health" means the medical officer under the Public Health (Scotland) Act, 1897 :
- (4.) The expression "poor law medical officer" means the medical officer appointed by the parish council :
- (5.) The expression "court of summary jurisdiction" means the sheriff of the county :
- (6.) The expression "Board of Education" means the Scotch Education Department :
- (7.) The provisions of this Act relating to certificates of proficiency or of due attendance shall not apply, but a child of the age of thirteen years, who has obtained exemption from the obligation to attend school in the manner prescribed by section three of the Education (Scotland) Act, 1901. shall be deemed to be a young person for the purposes of this Act.
- (8.) The expression "county court" means the sheriff court :
- Application of Act to Scotland.
- 60 & 61 Vict. c. 38.
- 1 Edw. 7, c. 9.

- (9.) All matters required by this Act to be published in the London Gazette shall, if they relate to Scotland, be published in the Edinburgh Gazette, either in addition or in substitution as the case may require.
- (10.) The expression "information" means petition or complaint :
- (11.) The expression "informant" means petitioner, pursuer, or complainer :
- (12.) The expression "defendant" means defender or respondent :
- (13.) The expression "clerk of the peace" means sheriff clerk :
- (14.) The expression "owner" has the meaning given to it by section three of the Public Health (Scotland) Act, 1897 :
- (15.) The expression "inspector of nuisances" means sanitary inspector within the meaning of the Public Health (Scotland) Act, 1897 :
- (16.) The expression "Births and Deaths Registration Acts, 1836 to 1874," means the Acts relating to the registration of births, deaths, and marriages in Scotland :
- (17.) The expression "Public Health Act, 1875," means the Public Health (Scotland) Act, 1897, and the Acts amending the same, and references to section ninety-one and sections one hundred and eighty-two to one hundred and eighty-six of the Public Health Act, 1875, shall be construed respectively as references to section sixteen and sections one hundred and eighty-three to one hundred and eighty-seven of the Public Health (Scotland) Act, 1897 :
- (18.) The expenses incurred by a local authority under the provisions of this Act with respect to means of escape in case of fire shall be defrayed out of the public health general assessment levied under the Public Health (Scotland) Act, 1897 :
- (19.) The expression "Local Government Board" means the Local Government Board for Scotland :
- (20.) All offences under this Act shall be prosecuted and all penalties under this Act shall be recovered under the provisions of the Summary Jurisdiction (Scotland) Acts at the instance of the procurator fiscal or of any inspector :
- (21.) The court may make, and may alter or vary, summary orders under this Act on petition by the procurator fiscal or an inspector presented in common form :
- (22.) All fines under this Act in default of payment, and all orders made under this Act failing compliance, may be enforced by imprisonment for a term to be specified in the order or conviction, but not exceeding three months :
- (23.) It shall be no objection to the competency of an inspector to give evidence as a witness in any prosecution for offences under this Act, that the prosecution is brought at the instance of that inspector :
- (24.) Every person convicted of any offence under this Act shall be liable in the reasonable costs and charges of the conviction :
- (25.) All penalties imposed and recovered under this Act shall be paid to the clerk of the court, and by him accounted for and paid to the King's and Lord Treasurer's Remembrancer on behalf of His Majesty's Exchequer, and shall be carried to the Consolidated Fund :
- (26.) All jurisdictions, powers, and authorities necessary for the purposes of this section are conferred on the sheriffs :
- (27.) The provisions of this Act with respect to appeals to quarter sessions shall not apply, and any person may appeal from any order or conviction under this Act to the Court of Justiciary, under and in terms of the Heritable Jurisdictions (Scotland) Act, 1746, or under any enactment amending that Act, or applying or incorporating its provisions or any of them with

60 & 61 Vict.
c. 38.

- regard to appeals, or under and in terms of the Summary Prosecutions Appeal (Scotland) Act, 1875. 38 & 39 Vict. c. 62.
160. In the application of this Act to Ireland— Application of Act to Ireland.
- (1.) The expression "certified efficient school" means any national school, or any school recognised by the Lord Lieutenant and Privy Council as affording sufficient means of literary education for the purposes of this Act :
 - (2.) The expression "recognised efficient school" means a certified efficient school and any school which is recognised for the time being by an inspector under this Act as giving efficient elementary education :
 - (3.) In the provisions of this Act relating to certificates of birth the Irish Education Act, 1892, shall be substituted for the Elementary Education Act, 1876, and a school attendance committee shall be substituted for a local authority : 55 & 56 Vict. c. 42.
 - (4.) In the provisions of this Act relating to payment by occupiers of sums for schooling, the Irish Education Act, 1892, shall be substituted for the Elementary Education Act, 1891, and a school grant shall be substituted for a fee grant :
 - (5.) The expression "medical officer of health" includes a medical superintendent of health :
 - (6.) The expression "poor law medical officer" means the medical officer of a dispensary district :
 - (7.) Any act authorised to be done or consent required to be given by, or report required to be made to, the Board of Education under this Act shall be done and given by or to the Lord Lieutenant, acting by and with the advice of the Privy Council in Ireland :
 - (8.) A court of summary jurisdiction when hearing and determining an information or complaint in any matter arising under this Act shall be constituted within the police district of Dublin metropolis of one of the divisional justices of that district sitting at a police court within the district, and elsewhere of a resident magistrate appointed under the Constabulary (Ireland) Act, 1836, sitting alone, or with others, or of two or more justices of the peace sitting in petty sessions at a place appointed for holding petty sessions : 6 & 7 Will. 4. c. 13.
 - (9.) Appeals from a court of summary jurisdiction shall lie in accordance with the provisions of the Summary Jurisdiction (Ireland) Acts :
 - (10.) All fines imposed under this Act shall, save as is otherwise expressly provided by this Act, be applied in the manner directed by the Fines Act (Ireland), 1851, and any Act amending the same : 14 & 15 Vict. c. 90.
 - (11.) The provisions of section one hundred and seven of the Public Health (Ireland) Act, 1878, with respect to a factory, workshop, or workplace, not kept in a cleanly state, or not ventilated, or overcrowded, shall not apply to any factory which is subject to the provisions of this Act with respect to cleanliness, ventilation, and overcrowding, but shall apply to every other factory, workshop, or workplace : 41 & 42 Vict. c. 52.
 - (12.) The Sanitary Acts within the meaning of the Public Health (Ireland) Act, 1878, shall apply to buildings in which persons are employed, whatever their number may be, in like manner as they apply to buildings where more than twenty persons are employed :
 - (13.) The Public Health (Ireland) Act, 1878, shall be substituted for the Public Health Act, 1875, and in particular sections two, one hundred and seven, and two hundred and nineteen to two hundred and twenty-three of the former Act shall be substituted for sections four, ninety-one, and one hundred and eighty-two to one hundred and eighty-six of the latter Act respectively : 41 & 42 Vict. c. 52.
 - (14.) The expression "the Local Government Board" means the Local Government Board for Ireland :

- (15.) The expression "the Births and Deaths Registration Acts, 1836 to 1874," means the Births and Deaths Registration (Ireland) Acts, 1863 to 1880;
- (16.) All matters required by this Act to be published in the London Gazette shall, if they relate to Ireland, be published in the Dublin Gazette, either in addition or in substitution as the case may require.

(iii.) *Repeal, &c.*

Repeal of
Acts.

161. The Acts specified in the Seventh Schedule to this Act are hereby repealed as from the dates and to the extent in that schedule mentioned: Provided that—

- (1.) All notices affixed in a factory or workshop in pursuance of any enactment hereby repealed shall, so far as they are in accordance with the provisions of this Act, be deemed to have been affixed in pursuance of this Act; and
- (2.) All orders and all special rules and requirements made or having effect under any enactment hereby repealed shall continue to have effect as if they had been made under this Act; and nothing in this Act shall be construed as altering the mode of making such special rules or requirements whilst the power to make them continues in force; and
- (3.) All inspectors, sub-inspectors, certifying surgeons, officers, clerks, and servants appointed in pursuance of any enactment hereby repealed shall continue in office and shall be subject to removal and have the same powers and duties as if they had been appointed in pursuance of this Act; and
- (4.) All certificates of fitness for employment granted in pursuance of any enactment hereby repealed shall have effect as if granted in pursuance of this Act, and all registers kept in pursuance of any enactment hereby repealed shall, until otherwise directed by the Secretary of State, be deemed to be the registers required by this Act.

Commence-
ment of Act.
Short title.

162. This Act shall come into operation on the first day of January one thousand nine hundred and two.

163. This Act may be cited as the Factory and Workshop Act, 1901.

SCHEDULES.

Section 14

FIRST SCHEDULE.

PROVISIONS AS TO ARBITRATIONS.

(1.) The parties to the arbitration are in this schedule deemed to be the owner of the factory or workshop on the one hand and the district council on the other hand.

(2.) Each of the parties to the arbitration may, within fourteen days after the date of the reference, appoint an arbitrator.

(3.) No person shall act as arbitrator or umpire who is employed in, or in the management of, or is interested in, the factory or workshop to which the arbitration relates.

(4.) The appointment of an arbitrator must be in writing, and notice of the appointment shall be forthwith sent to the other party to the arbitration, and the appointment shall not be revoked without the consent of that party.

(5.) The death or removal of, or other change in, any of the parties to the arbitration shall not affect the proceedings under this schedule.

(6.) If within the said fourteen days either of the parties fails to appoint an arbitrator, the arbitrator appointed by the other party may

proceed to hear and determine the matter in difference, and in that case the award of the single arbitrator shall be final.

(7.) If before an award has been made any arbitrator appointed by either party dies or becomes incapable to act, or for seven days refuses or neglects to act, the party by whom that arbitrator was appointed may appoint some other person to act in his place; and if he fails to do so within seven days after notice in writing from the other party for that purpose, the remaining arbitrator may proceed to hear and determine the matter in difference, and in that case the award of the single arbitrator shall be final.

(8.) In either of the foregoing cases where an arbitrator is empowered to act singly, on one of the parties failing to appoint, the party so failing may, before the single arbitrator has actually proceeded in the arbitration, appoint an arbitrator, who shall then act as if no failure had occurred.

(9.) If the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time (if any) as has been appointed for that purpose by both arbitrators under their hands, the matter in difference shall be determined by the umpire appointed as herein-after mentioned.

(10.) The arbitrators, before they enter on the matter referred to them, shall appoint by writing under their hands an umpire to decide on points on which they may differ.

(11.) If the umpire dies or becomes incapable of acting before he has made his award, or refuses to make his award within a reasonable time after the matter has been brought within his cognizance, the persons or person who appointed such umpire shall forthwith appoint another umpire in his place.

(12.) If the arbitrators refuse or fail, or for seven days after the request of either party neglect, to appoint an umpire, then on the application of either party an umpire may be appointed by the chairman of the quarter sessions within the jurisdiction of which the factory or workshop is situate.

(13.) The decision of every umpire on the matters referred to him shall be final.

(14.) If a single arbitrator fails to make his award within twenty-one days after the day on which he was appointed, the party who appointed him may appoint another arbitrator to act in his place.

(15.) Arrangements shall, whenever practicable, be made for the matters in difference being heard at the same time before the arbitrators and the umpire.

(16.) The arbitrators and the umpire, or any of them, may examine the parties and their witnesses on oath, and may also consult any counsel, engineer, or scientific person whom they think it expedient to consult.

(17.) The payment, if any, to be made to any arbitrator or umpire for his services shall be fixed by the Secretary of State, and together with the costs of the arbitration and award shall be paid by the parties, or one of them, according as the award may direct. Such costs may be taxed by a master of the Supreme Court, or, in Scotland, by the auditor of the Court of Session, and the taxing officer shall, on the written application of either of the parties, ascertain and certify the proper amount thereof. The amount, if any, payable by the Secretary of State shall be paid as part of the expenses of inspectors under this Act. The amount, if any, payable by the occupier of the factory or workshop may in the event of nonpayment be recovered in the same manner as fines under this Act.

SECOND SCHEDULE.

FACTORIES AND WORKSHOPS IN WHICH OVERTIME IS ALLOWED. Section 49.

(1.) Non-textile factories and workshops and parts thereof where the material which is the subject of the manufacturing process or handicraft is liable to be spoiled by weather; namely,—

- (a.) Flax scutch mills, and
- (b.) Any factory or workshop or part thereof in which is carried on the making or finishing of bricks or tiles not being ornamental tiles; and
- (c.) The part of rope works in which is carried on the open-air process; and
- (d.) The part of bleaching and dyeing works in which is carried on open-air bleaching or Turkey red dyeing; and
- (e.) Any factory or workshop or part thereof in which is carried on glue making; and
- (2.) Non-textile factories and workshops and parts thereof, where press of work arises at certain recurring seasons of the year, namely:—
 - (f.) Letter-press printing works; and
 - (g.) Bookbinding works; and
 any factory, workshop, or part thereof, in which is carried on the manufacturing process or handicraft of—
 - (h.) Lithographie printing; or
 - (i.) Machine ruling; or
 - (k.) Firewood cutting; or
 - (l.) Bon-bon and Christmas present making; or
 - (m.) Almanac making; or
 - (n.) Valentine making; or
 - (o.) Envelope making; or
 - (p.) Aërated water making; or
 - (q.) Playing card making; and
- (3.) Non-textile factories and workshops and parts thereof where the business is liable to sudden press of orders arising from unforeseen events; namely, any factory or workshop, or part thereof, in which is carried on the manufacturing process or handicraft of—
 - (r.) The making up of any article of wearing apparel; or
 - (s.) The making up of furniture hangings; or
 - (t.) Artificial flower making; or
 - (u.) Fancy box-making; or
 - (v.) Biscuit making; or
 - (w.) Job dyeing; and
- (4.) Any part of a factory (whether textile or non-textile) or workshop which is a warehouse not used for any manufacturing process or handicraft, and in which persons are solely employed in polishing, cleaning, wrapping, or packing up goods.

THIRD SCHEDULE.

Section 89.

REGULATIONS AS TO GRINDING IN TENEMENT FACTORY.

- (1.) Boards to fence the shafting and pulleys, locally known as drum boards, must be provided and kept in proper repair.
- (2.) Hand rails must be fixed over the drums and kept in proper repair.
- (3.) Belt guards, locally known as scotchmen, must be provided and kept in proper repair.
- (4.) Every floor constructed on or after the first day of January one thousand eight hundred and ninety-six must be so constructed and maintained as to facilitate the removal of slush, and all necessary shoots, pits, and other conveniences must be provided for facilitating such removal.
- (5.) Every grinding room or hull established on or after the first day of January one thousand eight hundred and ninety-six must be so constructed that for the purpose of light grinding there shall be a clear space of three feet at least between each pair of troughs, and for the purpose of heavy grinding there shall be a clear space of four feet at

least between each pair of troughs and six feet at least in front of each trough.

(6.) The sides of all drums in every grinding room or hull must be closely fenced.

(7.) Except in pursuance of a special exemption granted by the Secretary of State, a grindstone must not be run before any fire-place or in front of another grindstone.

(8.) A grindstone erected on or after the first day of January one thousand eight hundred and ninety-six must not be run before any door or other entrance.

FOURTH SCHEDULE.

COTTON CLOTH FACTORIES.

Sections
90-92, 96.

TABLE.

MAXIMUM LIMITS OF HUMIDITY OF THE ATMOSPHERE AT GIVEN TEMPERATURES.

I.	II.	III.	IV.
Grains of Vapour per Cubic Foot of Air.	Dry Bulb Thermo- meter Readings. Degrees Fahrenheit.	Wet Bulb Thermo- meter Readings. Degrees Fahrenheit.	Percentage of Humidity. Saturation = 100.
1.9	35	33	80
2.0	36	34	82
2.1	37	35	83
2.2	38	36	83
2.3	39	37	84
2.4	40	38	84
2.5	41	39	84
2.6	42	40	85
2.7	43	41	84
2.8	44	42	84
2.9	45	43	85
3.1	46	44	86
3.2	47	45	86
3.3	48	46	86
3.4	49	47	86
3.5	50	48	86
3.6	51	49	86
3.8	52	50	86
3.9	53	51	86
4.1	54	52	86
4.2	55	53	87
4.4	56	54	87
4.5	57	55	87
4.7	58	56	87
4.9	59	57	88

FOURTH SCHEDULE--continued.

I. Grains of Vapour per Cubic Foot of Air.	II. Dry Bulb Thermo- meter Readings, Degrees Fahrenheit.	III. Wet Bulb Thermo- meter Readings, Degrees Fahrenheit.	IV. Percentage of Humidity, Saturation=100.
5.1	60	58	88
5.2	61	59	88
5.4	62	60	88
5.6	63	61	88
5.8	64	62	88
6.0	65	63	88
6.2	66	64	88
6.4	67	65	88
6.6	68	66	88
6.9	69	67	88
7.1	70	68	88
7.1	71	68.5	85.5
7.1	72	69	84
7.4	73	70	84
7.4	74	70.5	81.5
7.65	75	71.5	81.5
7.7	76	72	79
8.0	77	73	79
8.0	78	73.5	77
8.25	79	74.5	77.5
8.55	80	75.5	77.5
8.6	81	76	76
8.65	82	76.5	74
8.85	83	77.5	74
8.9	84	78	72
9.2	85	79	72
9.5	86	80	72
9.55	87	80.5	71
9.9	88	81.5	71
10.25	89	82.5	71
10.3	90	83	69
10.35	91	83.5	68
10.7	92	84.5	68
11.0	93	85.5	68
11.1	94	86	66
11.5	95	87	66
11.8	96	88	66
11.9	97	88.5	65.5
12.0	98	89	64
12.3	99	90	64
12.7	100	91	64

FORM OF RECORD.

FORM FOR RECORDING THE READINGS OF THE THERMOMETERS.

Name of Occupier

Address of Factory

Room { Number or Designation
 Process carried on
 Number of Operatives
 Cubic contents

cubic feet.

Date.		READINGS OF THERMOMETERS IN DEGREES FAHRENHEIT.						If no Artificial Humidity is produced in the 24 hours, insert in this column "None."
Year	Month and Day.	Between 7 and 8 a.m.		Between 10 and 11 a.m.		Between 3 and 4 p.m.		
		Dry Bulb.	Wet Bulb.	Dry Bulb.	Wet Bulb.	Dry Bulb.	Wet Bulb.	
	1							
	2							
	3							
	4							
	5							
	6							
	7							
	8							
	9							
	10							
	11							
	12							
	13							
	14							
	15							
	16							
	17							
	18							
	19							
	20							
	21							
	22							
	23							
	24							
	25							
	26							
	27							
	28							
	29							
	30							
	31							

(Signed)

Occupier or Manager.

FIFTH SCHEDULE.

Section 124.

FEES OF CERTIFYING SURGEONS.

PART I.

FEES ON EXAMINATION FOR CERTIFICATES OF FITNESS FOR EMPLOYMENT.

When the examination is at the factory or workshop	2s. 6d. for each visit, and 6d. for each person after the first five examined at that visit ; and also if the factory or workshop is more than one mile from the surgeon's residence, 6d. for each complete half mile over and above the mile.
When the examination is not at the factory or workshop, but at the residence of the surgeon, or at some place appointed by the surgeon for the purpose, and that place as well as the day and hour appointed for the purpose has been published in the prescribed manner	6d. for each person examined.

PART II.

FEES ON EXAMINATION BY DIRECTION OF SECRETARY OF STATE OR IN PURSUANCE OF REGULATIONS UNDER THIS ACT.

When the number of hands is under 10	2s. 6d. per visit.
" " " " 20	3s. "
" " " " 30	3s. 6d. "
" " " " 50	4s. "
" " " " 75	4s. 6d. "
" " " " 100	5s. "
" " " " over 100	7s. 6d. "

With the addition of 1s. for every mile or part of a mile in excess of one mile from the surgeon's residence.

SIXTH SCHEDULE.

Sections 54,
149, 156.

LIST OF FACTORIES AND WORKSHOPS.

PART I.—NON-TEXTILE FACTORIES.

- " Print works."

(1.) " Print works," that is to say, any premises in which any persons are employed to print figures, patterns, or designs upon any cotton, linen, woollen, worsted, or silken yarn, or upon any woven or felted fabric not being paper ;

" Bleaching and dyeing works."

(2.) " Bleaching and dyeing works," that is to say, any premises in which the processes of bleaching, beetling, dyeing, calendering, finishing, hooking, lapping, and making-up and packing (x) any yarn or cloth of any material, or the dressing or finishing of lace, or any one or more of such processes, or any process incidental thereto, are or is carried on ;

(x) *Rogers v. Manchester Packing Co.* (1898) 1 Q. B. 344.

- (3.) "Earthenware works," that is to say, any place in which persons work for hire in making or assisting in making, finishing, or assisting in finishing, earthenware or china of any description, except bricks and tiles not being ornamental tiles;
- (4.) "Lucifer-match works," that is to say, any place in which persons work for hire in making lucifer matches, or in mixing the chemical materials for making them, or in any process incidental to making lucifer matches, except the cutting of the wood;
- (5.) "Percussion-cap works," that is to say, any place in which persons work for hire in making percussion caps, or in mixing or storing the chemical materials for making them, or in any process incidental to making percussion caps;
- (6.) "Cartridge works," that is to say, any place in which persons work for hire in making cartridges, or in any process incidental to making cartridges, except the manufacture of the paper or other material that is used in making the cases of the cartridges;
- (7.) "Paper-staining works," that is to say, any place in which persons work for hire in printing a pattern in colours upon sheets of paper, either by blocks applied by hand, or by rollers worked by steam, water, or other mechanical power;
- (8.) "Fustian-cutting works," that is to say, any place in which persons work for hire in fustian cutting;
- (9.) "Blast furnaces," that is to say, any blast furnace or other furnace or premises in or on which the process of smelting or otherwise obtaining any metal from the ores is carried on;
- (10.) "Copper mills";
- (11.) "Iron mills," that is to say, any mill, forge, or other premises, in or on which any process is carried on for converting iron into malleable iron, steel, or tin plate, or for otherwise making or converting steel;
- (12.) "Foundries," that is to say, iron foundries, copper foundries, brass foundries, and other premises or places in which the process of founding or casting any metal is carried on; except any premises or places in which such process is carried on by not more than five persons and as subsidiary to the repair or completion of some other work;
- (13.) "Metal and india-rubber works," that is to say, any premises in which steam, water, or other mechanical power is used for moving machinery employed in the manufacture of machinery, or in the manufacture of any article of metal not being machinery, or in the manufacture of india-rubber or gutta-percha, or of articles made wholly or partially of india-rubber or gutta-percha;
- (14.) "Paper mills," that is to say, any premises in which the manufacture of paper is carried on;
- (15.) "Glass works," that is to say, any premises in which the manufacture of glass is carried on;
- (16.) "Tobacco factories," that is to say, any premises in which the manufacture of tobacco is carried on;
- (17.) "Letter-press printing works," that is to say, any premises in which the process of letter-press printing is carried on;
- (18.) "Bookbinding works," that is to say, any premises in which the process of bookbinding is carried on;
- (19.) "Flax scutch mills";
- (20.) "Electrical stations" (y), that is to say, any premises or that part of any premises in which electrical energy is generated or transformed for the purpose of supply by way of trade, or for the lighting of any street, public place, or public building, or of any hotel, or of any railway, mine, or other industrial undertaking.

"Earthenware works."

"Lucifer-match works."

"Percussion-cap works."

"Cartridge works."

"Paper-staining works."

"Fustian-cutting works."

"Blast furnaces."

"Copper mills."

"Iron mills."

"Foundries."

"Metal and india-rubber works."

"Paper mills."

"Glass works."

"Tobacco factories."

"Letter-press printing works."

"Bookbinding works."

"Flax scutch mills."

"Electrical stations."

(y) This is an addition to the list of non-textile factories in Part I., which otherwise is the same as the list contained in Part I. of the corresponding schedule to the Factory and Workshop Act, 1878.

PART II.—NON-TEXTILE FACTORIES AND WORKSHOPS.

- "Hat works." (21.) "Hat works," that is to say, any premises in which the manufacture of hats or any process incidental to their manufacture is carried on ;
- "Rope works." (22.) "Rope works," that is to say, any premises being a ropery, ropewalk, or ropework, in which is carried on the laying or twisting or other process of preparing or finishing the lines, twines, cords, or ropes, and in which machinery moved by steam, water, or other mechanical power is not used for drawing or spinning the fibres of flax, hemp, jute, or tow, and which has no internal communication with any buildings or premises joining or forming part of a textile factory, except such communication as is necessary for the transmission of power ;
- "Bake-houses." (23.) "Bakehouses," that is to say, any places in which are baked bread, biscuits, or confectionery from the baking or selling of which a profit is derived ;
- "Lace ware-houses." (24.) "Lace warehouses," that is to say, any premises, room, or place not included in bleaching and dyeing works as herein-before defined, in which persons are employed upon any manufacturing process or handicraft in relation to lace, subsequent to the making of lace upon a lace machine moved by steam, water or other mechanical power ;
- "Shipbuilding yards." (25.) "Shipbuilding yards," that is to say, any premises in which any ships, boats, or vessels used in navigation, are made, finished, or repaired (z) ;
- "Quarries." (26.) "Quarries," that is to say, any place, not being a mine, in which persons work in getting slate, stone, coprolites or other minerals ;
- "Pit-banks." (27.) "Pit-banks," that is to say, any place above ground adjacent to a shaft of a mine, in which place the employment of women is not regulated by the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, whether such place does or does not form part of the mine within the meaning of those Acts ;
- 50 & 51 Vict. c. 58. (28.) Dry cleaning, carpet beating, and bottle washing works (a).
- 35 & 36 Vict. c. 77.

Section 161.

SEVENTH SCHEDULE.

PART I.

ENACTMENTS REPEALED AS FROM THE COMMENCEMENT OF THIS ACT.

Session and Chapter.	Title of Act.	Extent of Repeal.
41 & 42 Vict. c. 16 .	The Factory and Workshop Act, 1878.	The whole Act.
46 & 47 Vict. c. 53 .	The Factory and Workshop Act, 1883.	The whole Act.
52 & 53 Vict. c. 62 .	The Cotton Cloth Factories Act, 1889.	The whole Act.
54 & 55 Vict. c. 75 .	The Factory and Workshop Act, 1891.	The whole Act except sections eight, nine, ten, and twelve, and the First Schedule.

(z) The fact that repairs are being done to a ship in a dock does not make the dock a "ship building yard" : *Spencer v. Livett* (1900) 1 Q. B. 498.

(a) This item, No. 28, is an addition to the list of non textile factories and workshops. Under the Act of 1878 it was held in *Law v. Graham* (1901) 2 K. B. 327, that a bottle-washing establishment was not a "non-textile factory or workshop."

SEVENTH SCHEDULE—*continued*.

Session and Chapter.	Title of Act.	Extent of Repeal.
58 & 59 Vict. c. 37 .	The Factory and Workshop Act, 1895.	The whole Act except section twelve, sub-section three of section twenty-four, and section twenty-eight.
60 & 61 Vict. c. 58 .	The Cotton Cloth Factories Act, 1897.	The whole Act.
63 & 64 Vict. c. 27 .	The Railway Employment (Prevention of Accidents) Act, 1900.	In sub-section three of section thirteen the words "factory, workshop or " wherever they occur, and the words "the occupier of the factory or workshop or."

PART II.

ENACTMENTS REPEALED FROM A DATE TO BE FIXED BY ORDER OF THE SECRETARY OF STATE.

Session and Chapter.	Short Title.	Extent of Repeal.
54 & 55 Vict. c. 75 .	The Factory and Workshop Act, 1891.	Sections eight, nine, ten, and twelve, and the First Schedule.
58 & 59 Vict. c. 37 .	The Factory and Workshop Act, 1895.	Section twelve. Sub-section three of section twenty-four. Section twenty-eight.

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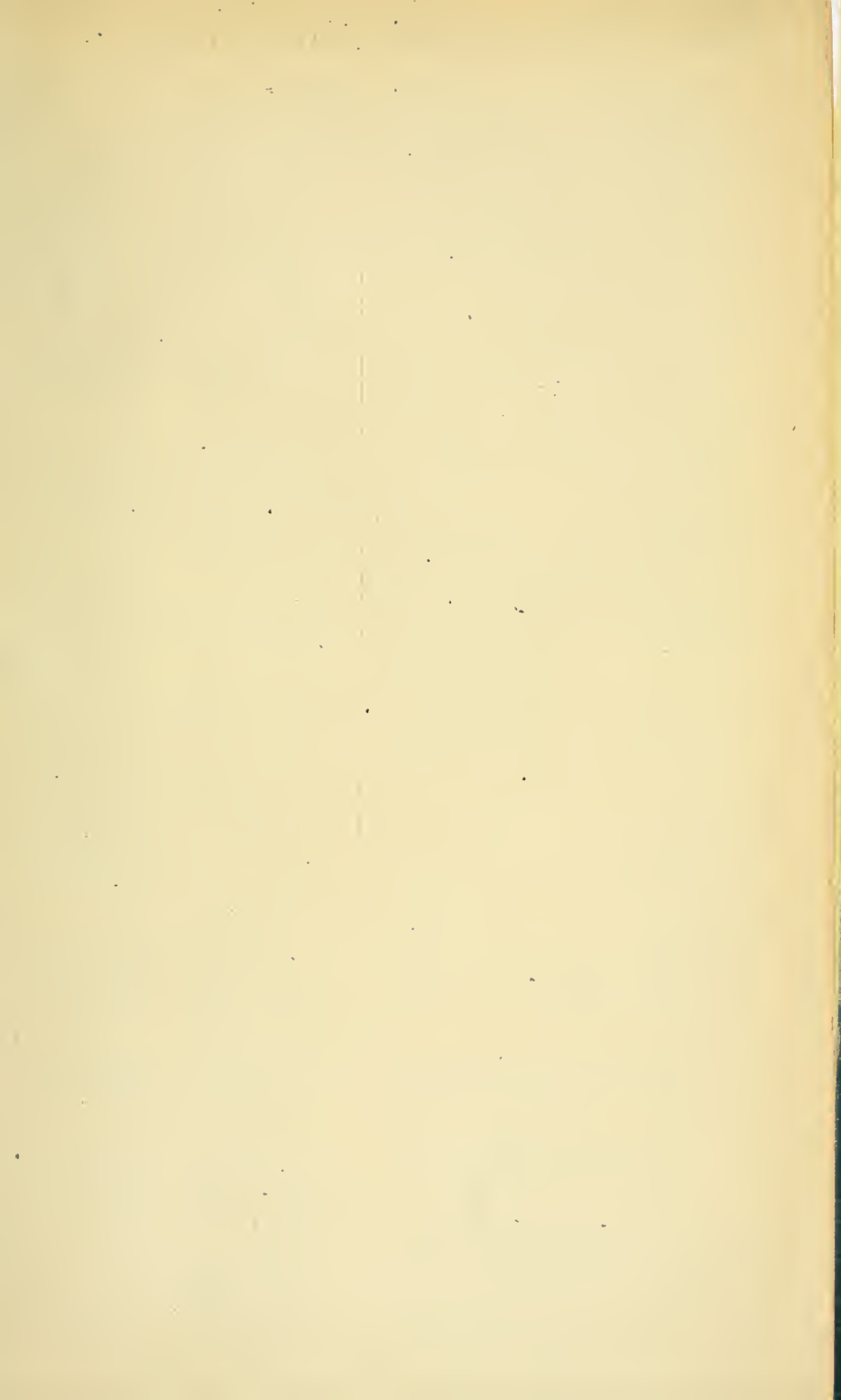
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